BENGAL RYOTS;

THEIR

RIGHTS AND LIABILITIES:

BEING

AN ELEMENTARY TREATISE ON THE LAW
OF LANDLORD AND TENANT.

BY

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PREFACE.

THE following compilation is presented to the public in the hope that it will supply a desideratum. There are many valuable works on the Law of Landlord and Tenant in Bengal,—but, while giving ample details of the procedure, it was not within the scope of any of them to refer to the principles which have guided legislation on the subject, or to the historic changes which have, in process of time, revolutionised the legal and social relation between two of the most important sections of the community. To understand a result, we must always go to its antecedents and its precursors—there to seek its causes;—we must study the revolutions which have led to it,—and estimate its value by the light of the past. The compiler felt that it had not been hitherto attempted to treat the existing Law of Landlord and Tenant in this spirit. Sensible that his own limited powers are unequal to so ambitious a work, he has still presumed to lay before the public an Elementary Treatise on the Substantive Law, illustrated by legislative history, in the hope that it may serve as an introduction to a study of the subject in greater detail, and that till some one more competent to the great work undertakes it, his humble book will place in the hands of the members of the

profession—of students and other enquirers—of the propertied class—and of the public at large—information not generally available.

The object of this compilation has therefore been to avoid procedure as much as possible, and to state the Substantive Law, illustrated by the history of Legislation, and the principles which have guided it. It has, however, been sometimes necessary to advert to questions of procedure in order to explain the Substantive Law itself; and on these occasions procedure has not been avoided.

The compiler has to claim the indulgence of his readers for the many defects of his work. The most prominent is doubtless that which results from his having to write in a foreign language. A work of the kind to be useful must be written in English,—and the compiler had no choice. The disadvantage is great—and doubtless the reader will bear with his English patiently. If he prove everywhere intelligible—all he aimed at will have been gained.

Calcutta,
28*th April,* 1864.

S. C. C.

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INTRODUCTION.

RYOTS—WHO THEY ARE—THEIR CLASSIFICATION—THEIR SOCIAL CONDITION BEFORE THE PERMANENT SETTLEMENT—ERRORS OF THE PERMANENT SETTLEMENT AS AFFECTING THE RYOTS—THEIR PRESENT RIGHTS AND LIABILITIES.

"THE Arabic word *Rayet* or *Ryot*," says Mr. Rouse, "strictly means no more than a *subject;* and its plural Ruâya, which is the term mostly used in Acts of Government or political disquisitions, signifies in a collective sense *the people* or *subjects;* applying however more particularly to the inferior classes, but not necessarily cultivators, nor any tenants at all to the king, or any other person."*

Messrs. Anderson, Croft and Bogle, the Commissioners appointed in 1776 to collect materials for a revenue settlement, define Ryot as "the immediate occupant of the soil, whether he be considered as proprietor or tenant. The word Ryot," they continue, "in its most extensive signification, means a subject; but it is usually applied to the numerous and inferior class of people, who hold and cultivate small spots of land on their own account, and might perhaps properly be denominated *terre tenants.*"†

Lord Bentinck says, "the term Ryot comprises the

* B. Rouse on Landed Property of Bengal, page 73.

† In their Report dated 25th March, 1778.

whole agricultural community."* The Board of Revenue also, in their Circular No. 29 dated the 12th November, 1833, directed that under the general term Ryot, it was intended to include every class of under-tenant or husbandman, (not being hired labourer) not advancing any pretensions to co-parcenary in proprietory immunities.

The High Court, however, in the case of Moharaja Norendro Narayun Bhoop, appellant, held recently that persons possessing an interest intermediate between the proprietor of an estate and the Ryots, are not Ryots.

But in popular acceptation, the term Ryot seems also to include some of the intermediate holders of land, and this interpretation is not wholly without ground; for we have three classes of land-holders in Bengal, *viz.* the Zemindar who holds land of Government; the Talookdar who holds of the Zemindar land on a large scale; the Ryot who holds of the Zemindar or Talookdar on a small scale. A Mouroos-dar, therefore, who holds of a Talookdar only one beegha of land with right to underlet, is not himself a Talookdar, and must therefore, in the popular sense, be a Ryot. He who holds under a Ryot is generally known as *Peta-o*, or *corpa* or *corfja* Ryot. It will be necessary in the course of the following compilation to regard the term Ryot as meaning the holder or occupier of some small holding generally, either immediately from the Zemindar, or mediately from him through a Talookdar.

* Governor General's Minute of 26th September, 1832, para 18.

There are several descriptions of Ryots, and they may be classified according as we view them in connection with one or other of their principal features.

With respect to the manner of paying their rents, the Ryots may be divided, as Messrs. Commissioners Anderson, Croft and Bogle observe, "into *haree*, *fussulee*, and *comar*. The first hold a certain quantity of land, for which they pay a fixed rent per beegha whether cultivated or fallow. The rent of the *fussulee* Ryots depends on the crop which their land is made to produce. Thus a beegha of ground, if cultivated with mulberry, pays a much higher rent than if sown with rice. The *comar* Ryots pay in kind, and give a proportion of the crop as the rent of their land."*

With regard to their residence, they are classified under the denominations of Khoodcasht and Pyecasht. The name of Khoodcasht is given to those Ryots who are inhabitants of the village to which the lands they cultivate belong. Their right of possession, whether it arises from an actual property in the soil, or from length of occupancy, is considered as stronger than that of other Ryots. The Pyecasht Ryot on the contrary, rents land not belonging to his own village.

With reference to their duration, the holdings of the Ryots are generally divided into two classes, viz: *Mouroosee* or permanent holdings, and *Me-a-dee* or holdings for a term of years. Under the first are included *Khoodcashtee, Bagat, Bastoo, Guntee, &c.* The

* Report dated 25th March, 1778.

second include Pyecashtee or Thanee *jotes* for a limited number of years. But Khoodcashtee and Pyecashtee holdings, under the present law, stand on nearly the same footing, and fall under one or other of the divisions according to the duration of the tenures and leases. The same remark applies with regard to *Jolkor*, *Folkor*, *Tolkor*, *Ghaskor*, *Bonkor*, *Bhagjote*, (which in some places is known as *Borga* or *Borgajote* or *Bhowlee*,) and others of less note.

Another and a most important mode of classifying Ryots, is with regard to their rights considered in the abstract. Adopting this method, Lord Bentinck divides them into three kinds, the first being to all intents and purposes proprietors of the land which they cultivate; the second having been originally tenants at will, but acquiring in course of time a prescriptive right of occupancy at fixed rates: and the third, mere contract cultivators.*

Act X. of 1859 also classifies the Ryots, with regard to their rights under three heads, *viz.*

I. Ryots holding at fixed rate of rent,
II. Ryots having right of occupancy but not holding at fixed rate of rent,
III. Ryots who have not acquired the right of occupancy and therefore are tenants at will.

This is the best classification that has been given, and it is the only one convenient for us to adopt. We propose to examine in the following pages how Ryots under

* Minute dated 26th September, 1832.

this classification acquire their different rights and liabilities.

The condition of the Ryots is not a very pleasant subject of inquiry, whatever might have been their actual condition during the Hindoo period, of which, however, we have but very few reliable sources of information, except as regards the distribution of officers employed for their protection. We have, however, ample reasons to believe that it was very wretched during the latter period of the Mahomedan Rule. In those days the entire Government of the country rested on the will of one person only—the king—whose insatiable thirst for luxury and other vices led to insatiable demands for money. Now, money was to be had only from the Ryot, and the agents to whom the office of extorting it was entrusted, belonged generally to a class of people whose personal rapacity created no ordinary addition to the demands upon the Ryot's purse. The consequence was, that the greatest portion of his labor had to be employed to feed the luxury of his master *(moneeb)*, and what was left to him was often insufficient for his providing himself with the commonest and most indispensable necessaries of life.

The social condition of the people, therefore, was that throughout the length and breadth of this vast country, wretched in the extreme, there were only a few scores of wealthy Zemindars, who had fattened on the life-blood of the Ryot; and the rest of the people remained a ragged and penurious mass, crushed under the overwhelming oppressions of the vastly superior class.

There was wanting the healthy influence of a middle class—that main-spring of every civilized society, calculated alike to drag on in its march the tardy masses of the ranks behind, and to impel forward languid aristocracies in front. Much was to be hoped from the enlightened policy of the British Government, which succeeded the effête Moslem supremacy in India, and to a certain extent, these hopes have been realized. The progressive state of education and commerce is fast raising up a middle class, but the condition of the Ryot nevertheless remains materially unchanged. Ragged and penniless as before, he can scarcely afford to provide himself with the most urgent necessaries of life, although the price of the agricultural produce has greatly risen.

This penury and helplessness of the Ryots have been attributed to the defective provisions of the Permanent Settlement, which is an agreement that took place in 1792-3, during the administration of Lord Cornwallis, between the Government and the Zemindars, fixing the assessment then existing as unalterable, and confirming the latter in the permanent possession of their respective Zemindarees.

In this settlement the Zemindars have been declared to be the actual proprietors of lands, and have been permitted, except in cases of Istmraree and Mockrurce tenures, to increase the rent or to oust the occupying Ryots in the absence of any written engagements to the contrary. This permission has been abused as a license for unlimited exactions and oppressions, for which the settlement in question made no sufficient provision.

"Never," says Lord Hastings, "was there a measure conceived in a purer spirit of generous humanity and disinterested justice, than the plan for the Permanent Settlement in the Lower Provinces. It was worthy the soul of a Cornwallis; yet this truly benevolent purpose, fashioned with great care and deliberation, has, to our painful knowledge, subjected almost the whole of the Lower Provinces to the most grievous oppression; an oppression, too, so guaranteed by our pledge, that we are unable to relieve the sufferers."*

An opinion not less strong was recorded by Sir E. Colebrooke, a distinguished Member of the Supreme Council, who observed that "the errors of the settlement were two-fold; first, in the sacrifice of what might be denominated the Yeomanry, by merging all tillage rights, whether of property or of occupancy, in the all-devouring recognition of the Zemindar's permanent property in the soil; and then leaving the Zemindar to make his Settlement with the Peasantry as he might choose to require."†

Mr. George Canning taking the Chair of the Board of Controul in 1817, observed that both the Board and the Court of Directors were agreed upon this point, that "the System of 1793 though originating in the most enlightened views and the most benevolent motives, and though having produced considerable good, has nevertheless been attended in the course of its

* Minute by the Governor General, 31st December 1819.

† Quoted by the Select Committee of 1832.

operation with no small portion of evil to the people for whose happiness it was intended."*

The Select Committee of the House of Commons that sat in 1830, reported after a laborious investigation of two years, that "a great body of Evidence has been taken on the nature, object and consequences of this permanent Settlement," and that from this Evidence, they "cannot refrain from observing that it does not appear to have answered the purpose for which it was intended by its author, Lord Cornwallis, in 1792-3."

"The causes of this failure," continued the Committee, "may be ascribed, in a great degree, to the error of assuming at the time of making the Permanent Settlement, that the rights of all parties claiming an interest in the Land were sufficiently established by usage, to enable the Courts to protect individual rights; and still more to the measure, which declared the Zemindar to be the hereditary owner of the soil, whereas it is contended† that he was originally, with

* See his letter of the 17th August, 1817, to the Chairman and Deputy Chairman of the East India Company.

† The Committee of Revenue in their letter, dated 27th March 1786, are unanimously of opinion, that the Zemindars had neither proprietory nor heritable rights to the lands they held, under the Mogul rule, but that their tenures were merely temporary and official.

Sir Philip Francis, the celebrated Member of the Governor General's Council in Warren Hastings' time, observes in his Minute dated 22d January 1776, that "the land is the hereditary

few exceptions, the mere hereditary Steward, Representative, or Officer of the Government, and his undeni-

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property of the Zemindar. He holds it by the law of the country, on the tenure of paying certain contribution to Government, and the heritable quality of the lands is alone sufficient to prove that they are the properties of the Zemindar." Sir Philip moreover cites Mohummed Reza Khan, and adds that "the Princes have no immediate property in the lands, and that they even purchase grounds to build mosques and for burying places."

Mr. J. Grant maintains that "the Sovereign is sole, universal, proprietory lord of the land, and that Ryots hold directly of the prince by immemorial usage, as perpetual tenants *in capite*, subject to the annual payment of a certain fixed portion of the gross produce of the soil, in money or kind, to be collected through the intermediate agency of *farmers general*, or temporary Commissioned officers of the crown." By *farmers general* he means *Zemindars*, whom he calls also contractors of the annual rent of Government, with certain specific allotments of landed property called *nancar*, or means of subsistence. The tenure of the Zemindar is mentioned by Mr. J. Grant as only a *possessive* one.

Mr. Shore, afterwards Lord Teignmouth, says, that "the Zemindars if they did not originally possess, acquired in course of time a property in the soil, and the rights annexed thereto, of disposing of it by sale, gift and mortgage;" and "though the tenure was hereditary, it was nevertheless conditional, and the Zemindar was liable to dispossession either for a failure in the payment of his rents, or for delinquency."

The Court of Directors in their Despatch of the 15th September 1792, observe that "on the fullest consideration, we are inclined to think that whatever doubts may exist with respect to their original character, whether as proprietors of land or collectors of Revenue, or with respect to the changes which may

able hereditary property in the Land Revenue was totally distinct from property in the land itself," which he owned like other Ryots.

The Court of Directors, in their Despatch of 1819, remark "that consequences, the most injurious to the rights and interests of individuals, have arisen from describing those with whom the permanent settlement was concluded as the *actual proprietors of the land.*"* Lord Moira, too, alluding to some irremediable oppressions to which the people of this country were subject, says, "the cause of these is to be traced to the incorrectness of the principle assumed at the time of the perpetual settlement, when those with whom Government entered into engagements were declared the sole proprietors of the soil."† For the Zemindar, as has been said, was merely an officer of Government, or rather

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in process of time have taken place in their situation, there can at least be little difference of opinion as to the actual condition of the Zemindar under the Mogul Government. Custom generally gave them a certain species of hereditary occupancy, but the sovereign nowhere appears to have bound himself by any law or compact not to deprive them of it, and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure, which were constantly exercised upon this object. If considered therefore as a right of property, it was very imperfect and very precarious, having not at all, or but in a very small degree those qualities that confer independence and value upon the landed property of Europe."

* Revenue Despatch, dated 15th January, 1819, para. 54, to Bengal, Ceded and Conquered Provinces.

† Lord Moira's Minuté dated 21st September 1815, para. 141.

a contractor for the land Revenue, and had no right in the land itself, except in such as he owned and cultivated as *Neej-jote* in his private capacity, like other individuals. Mr. Campbell says, that "the fields which he held in his distinct capacity, as a cultivator, were never, in the slightest degree, confounded by the native Governments with his official contract or Zemindary tenure." This distinction, between the right of the cultivator in the soil, and the right of the Zemindar to the receipt of the land Revenue from the cultivator, is, in Mr. Campbell's opinion, of the greatest importance. "For," he adds, "it is the want of a clear perception of these two very distinct rights, which has given rise to the chief errors committed at the period of the Zemindary settlement."* The Government "by law, attributed to the Zemindar a property, not in the Land Revenue alone, nor even in the few fields which he occupied himself as a cultivator, but in every field throughout his Zemindary though occupied by, and belonging to others,"† that is to Ryots.

We concern ourselves only with the official view of the Permanent Settlement and its defect: but in corroboration of the principles maintained above, we beg to quote the following paragraph from the Historian of British India, which is too apposite to be left out. "There was an opportunity in India," says he, "to which

* Mr. A. D. Campbell's Paper on the Land Revenue of India, prepared at the request of the Select Committee of 1832. See Appendix No. 6 of their Report, Part III. Revenue, page 13.

† Ibid, page 27.

the history of the world presents no parallel. Next, after the sovereign, the immediate cultivators had, by far, the greatest portion of interest in the soil. For the rights (such as they were) of the Zemindars, a complete compensation might have easily been made. The generous resolution was adopted of sacrificing to the improvement of the country, the proprietory rights of the sovereign. The motives to improvement which property gives, and of which the power was so justly appreciated, might have been bestowed upon those upon whom they would have operated with a force incomparably greater than that with which they could operate upon any other class of men; they might have been bestowed upon those from whom alone in every country the principal improvements in agriculture must be derived, the immediate cultivators of the soil. And a measure, worthy to be ranked among the noblest that ever were taken for the improvement of any country, might have helped to compensate the people of India, for the miseries of that mis-government they had so long endured."*

As it is asserted on the one hand that the Zemindars were merely Government officers, so it is disputed on the other, that the Ryots have no rights, nor ever had any; but the vast mass of evidence adduced before the Select Committee in 1832 tends to prove that the Ryots *had* rights, and that even at the time of the Permanent Settlement their existence was admitted.

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* Mill's India, Book VI. ch. 5, page 491, vol. V. Wilson's edition.

Lord Cornwallis, in his Minute recorded on the 3rd February 1790, observes, that "every biggah of land possessed by the Ryots, must have been cultivated under an express or implied agreement, that a certain sum should be paid for each biggah and no more. Every abwab or tax imposed by the Zemindar over and above that sum, is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore, has, in such case, an undoubted right to apply to Government for the protection of his property; and, Government is, at all times, bound to afford him redress. The rents of an estate can only be raised by inducing the Ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land, which are to be found in almost every Zemindary in Bengal. I do not therefore hesitate to give it as my opinion, that the Zemindars neither now, nor ever could possess, a right to impose taxes or abwabs upon the Ryots; and if, from the confusion that has prevailed towards the close of the Mogul Government, or from a want of information since we have had possession of the country, new abwabs have been imposed by the Zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the like abuse in future." In another place he says: "Neither is the privilege which the Ryots in many parts of Bengal enjoy, of holding possession of the spots of land which

they cultivate so long as they pay the Revenue assessed upon them, by any means incompatible with the proprietory rights of the Zemindars. Whoever cultivates the land, the Zemindars can receive no more than the established rent, which in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving land to another, would be vesting him with a power to commit a wanton act of oppression, from which he would derive no benefit. The practice that prevailed under the Mogul Government of uniting many districts into one Zemindary, and thereby subjecting a large body of people to the control of one principal Zemindar, rendered some restrictions of this nature necessary."

From the above it is evident that even the framer of the Permanent Settlement has acknowledged that the Ryots had rights, *viz:* those of enjoying the lands they cultivated, even to the exclusion of the person whom the Zemindar might substitute in his stead: this is the right of occupancy: another right was that of holding land at the established rent, that is, at a fixed rent, which the Zemindar could not enhance.

Even these rights, admitted though they had been by Lord Cornwallis himself, have often been denied by men, who in the warmth of advocating his Lordship's system, carried their point to such an extreme, that they monopolized all the rights for their belauded Zemindars, and would not tolerate the mere assertion of the Ryots ever having had any right whatever. Some

of them have gone so far as to believe, that "in many parts of the country the resident cultivators are the actual slaves of the landholders, and liable to be mortgaged, bartered or let to hire, the same as his oxen and his goats, at his will and pleasure. Now," continues the judge, for such he was, "though no very staunch advocate for the varied and multiplied iniquities of slavery, I should not be at all disposed to reverse matters, to make the slaves masters, and the lords slaves."* This remark proceeded from Mr. W. Leycester while reviewing a Draft Regulation for the protection of the Ryots.

Lord Bentinck however remarks, "that in Bengal at least all that constitutes the value of such rights, had been obliterated long before the introduction of that measure," and further, "the worst effect fairly imputable to the measure as regards the agricultural community is, that it may have rendered more difficult the restoration of any rights which might at one time have belonged to them."†

The Government of the N. W. Provinces in their Direction to Revenue Officers remarked, that "the inferior rights have been in abeyance, not lost, their existence admitted and their recognition promised and deferred by no fault of the owners, but by the neglect of the ruling power."‡

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* Revenue Consultation, No. 5, 8th March, 1827.

† The Governor General's Minute of the 26th September, 1832, para. 19.

‡ See para. 108 of Direction to Revenue Officers of N. W. Provinces.

We have attempted to place before the readers what the rights of the cultivator had been; and also to lay before them the views of the greatest Indian statesmen on the great question of the Permanent Settlement. We might remark, that the great authorities we have quoted nowhere call into question the principle of the Permanent Settlement; nowhere do they call it unwise, that the claims of the Government on the produce of the soil, should have permanently been fixed, and the proprietorship vested in private individuals interested in its improvement. What was found fault with was, that the proprietorship was vested not in that section of the community, who were in fairness best entitled to the favor, and who were likely to prove the greatest improvers. Whatever the correctness of this view be, it is beyond question that the Permanent Settlement has not been devoid of beneficial results. But it is equally certain that the rights of the Ryots were not provided for with sufficient care. How subsequent legislation sought to remedy this error, and how improvement was eventually brought about by the second great adjustment of the rights of landlord and tenant, namely, the Act X. of 1859, will be seen in the course of this compilation.

The fundamental right and obligation of the Ryot are, in point of fact, very simple; the tenant who uses the land of another for his own benefit, has but a single right to enjoy, and a single obligation to fulfil.

The obligation he must fulfil is, that he should pay a consideration to the person whose land he uses, in other

words, pay him a *rent*. The rent once paid, he has a right to enjoy the remainder of the fruits of his labour.

To the full enjoyment of this right it becomes necessary, under certain circumstances, that he should be allowed to retain the land he cultivates, longer than the caprice or the love of gain of his landlord may allow. Thus his labour might have increased the productive powers of his land, and it is but fair that it should not be in the power of a capricious or unjust landlord, to deprive him of the land, which he has laboured to improve. Thus a secondary right, the right of occupancy, may spring up from the first.

These two rights are alike liable to frequent invasions. The right to enjoy undisturbed possession is invaded, when the landlord attempts to obtain, under the name of rent, a larger share than what he ought, in justice, to receive as such. In considering, therefore, the law of landlord and tenant, the first question that occurs is this—what is the share of the produce to which the landlord is justly entitled? We shall therefore first of all consider *What is rent?*

This will lead us to the question, what is the rent which the Bengal Ryot is bound by the law of his country to pay? We shall first take an historical view of the principles which have guided the legislation on the subject: we shall then state the existing law.

A close consideration of this subject will lead us to review the fluctuations to which that rate of rent is liable, or in other words, enhancement and abatement of rent.

The invasion of the other right results in *ejectment* or *cancelment of the lease.* We shall devote a chapter to this subject.

We shall next pass over from the invasion of the Ryots' rights by the Landlord to that of the invasion of the Landlord's rights by the Ryots. This invasion can only take one form—default of payment of rent. Default of payment leads to three consequences, *viz.*

I. Ejectment of Ryots,
II. Liability of Ryot's person to restraint,
III. Liability of Ryot's effects to distraint and sale.

We have already mentioned ejectment. We shall therefore conclude with a chapter on the *Personal liabilities of the Ryots,* and another on *Distraint.*

CHAPTER I.

WHAT IS RENT?

MALTHUS' DEFINITION OF RENT AS ADOPTED BY THE HIGH COURT —MILL'S EXPOSITION OF MALTHUS' THEORY OF RENT—THIS THEORY NOT APPLICABLE TO INDIA—HIGH COURT APPLIES IT TO BENGAL—HIGH COURT'S ADJUSTMENT OF RENT—ITS INCONSISTENCY WITH THE INTENTION OF ACT X. OF 1859.

MR. MALTHUS in his Principles of Political Economy, defines rent to be "that portion of the value of the whole produce, which remains to the owner of the land after all the outgoings belonging to its cultivation of whatever kind have been paid, including the profits of the capital employed estimated according to the usual and ordinary rate of agricultural capital at the time being." The High Court adopts this definition in the case of Ishur Ghose, appellant, and interprets that "the word 'outgoing' used in the above definition, must include a fair and equitable rate of wages for the labor employed in the cultivation of the lands, whether that of hired laborers paid out of capital, or the labor of the Ryot himself or of his family, and also, when the rent is paid in money, the labor and expenses of carrying the produce to market or of converting it into money."*

Taking the above definition with the Court's exposi-

* Hills *vs.* Ishur Ghose, 24th September, 1862.

tion thereof, we find that the "value of the whole produce" is distributed into three "portions," *viz:*

I. Wages of labour,
II. Profits of the Capital employed, and
III. Rent, which remains to the owner of the soil after deducting the above two items.

No one will cultivate land from which he cannot derive subsistence. It is therefore a primary condition for cultivation, that it would be possible to derive a subsistence from the cultivation of the particular land, and unless this condition is satisfied, it will not be cultivated; nor will merely the possibility of affording a subsistence ordinarily render any land culturable. For to cultivation, the investment of some capital in seed, tools, and the subsistence of the laborer, is indispensable; and a profit must be afforded to this stock, before any one, unless placed in exceptional circumstances, will be induced to undertake its cultivation. For any other mode of investment will bring in a profit, and no one will, under the circumstances, prefer an employment which can bring none. The produce of land must therefore first of all yield the wages of labour and the profits of stock. If it yields any thing *more*, that excess is *rent*.

This is the famous theory of rent discovered by Ricardo and Malthus, and we cannot do better than illustrate the greatest discovery in Political Economy of the last generation, in the words of the greatest Political Economist of the present.

"There is land such as the deserts of Arabia," says

Mr. J. S. Mill,* "which will yield nothing to any amount of labour, and there is land like some of our hard sand heaths, which would produce something, but, in the present state of the soil, not enough to defray the expenses of production.* * * * * *

"Land which cannot possibly yield a profit is sometimes cultivated at a loss, the cultivators having their wants partially supplied from other sources, as in the case of paupers and some monasteries or charitable institutions, among which may be reckoned the poor Colonies of Belgium. The worst land which can be cultivated as a means of subsistence, is that which will just replace the seed, and the food of the laborers employed on it, together with what Dr. Chalmers calls their secondaries; that is, the laborers required for supplying them with tools, and with the remaining necessaries of life. Whether any given land is capable of doing more than this, is not a question of political economy, but of physical fact. The supposition leaves nothing for profits, nor anything for the laborers except necessaries: the land, therefore, can only be cultivated by the laborers themselves, or else at a pecuniary loss: and *á fortiori* cannot in any contingency afford a rent. The worst land which can be cultivated as an investment for capital, is that which after replacing the seed, not only feeds the agricultural laborers, and their secondaries but affords them the current rate of wages, which may

* Principles of Political Economy, vol. I. Ed. of 1862, from page 506 to 519.

extend to much more than mere necessaries; and leaves for those who have advanced the wages of these two classes of laborers, a surplus equal to the profit they could have expected from any other employment of their capital. Whether any given land can do more than this is not merely a physical question, but depends partly on the market value of agricultural produce. * * * *

"As, however, differences of fertility slide into one another by insensible gradations; and differences of accessibility, that is, of distance from markets do the same; and since there is land so barren that it could not pay for its cultivation at any price, it is evident that, whatever the price may be, there must in any extensive region be some land which at that price will just pay the wages of the cultivators, and yield to the capital employed the ordinary profit and no more. Until, therefore, the price rises higher, or until some improvement raises that particular land to a higher place in the scale of fertility, it cannot pay any rent. It is evident, however, that the community needs the produce of this quality of land; since if the lands more fertile or better situated than it, could have sufficed to supply the wants of society, the price would not have risen so high as to render its cultivation profitable. This land, therefore, will be cultivated and we may lay it down as a principle, that so long as any of the land of a country which is fit for cultivation, and not withheld from it by legal or other factitious obstacles, is not cultivated, the worst land in actual cultivation (in point of fertility and situation together) pays no rent.

"If, then, of the lands in cultivation, the part which yields least return to the labor and capital employed on it, gives only the ordinary profit of capital, without leaving anything for rent; a standard is afforded for estimating the amount of rent which will be yielded by all other lands. Any land yields just as much more than the ordinary profits of stock, as it yields more than what is returned by the worst land in cultivation. The surplus is what the farmer can afford to pay as rent to the landlord; and since, if he did not so pay it, he would receive more than the ordinary rate of profit, the competition of other capitalists, that competition, which equalizes the profits of different capitals, will enable the landlord to appropriate it. The rent, therefore, which any land will yield, is the excess of its produce, beyond what would be returned to the same capital if employed on the worst land in cultivation.

"This is not," continues the same authority, "and never was pretended to be, the limit of metayer* rents, or of cottier† rents; but it is the limit of farmer's rent."

If the Bengal Ryot is analogous in position to the

* The principle of the metayer system is that the labourer, or peasant, makes his engagement directly with the landowner, and pays, not a fixed rent, either in money or kind, but a certain proportion of the produce, or rather of what remains of the produce after deducting what is considered necessary to keep the stock. J. S. Mill. vol. I. p. 365.

† In cottier tenure the labourer makes his contract for land without the intervention of a capitalist farmer, and in which the conditions of the contract, especially the amount of rent, are determined not by custom but by competition. Ibid, page 385.

capitalist farmer, who produces for profit, and whose rent is regulated by competition, not custom, this theory will apply. If however, he is to be regarded as analogous in position to the peasant proprietor paying to a co-proprietor a share of the produce liable to re-adjustment under specified conditions, or if the rent is determined by custom and not by competition, this theory will not apply.

Mr. Mill thinks, that the "multitudes who till the soil of India, are sufficiently analogous to the cottier system and at the same time sufficiently different from it, to render the comparison of the two a source of some instruction. In most parts of India there are, and perhaps have always been, only two contracting parties, the landlord and the peasant: the landlord being generally the sovereign, except where he has by a special instrument conceded his rights to an individual, who becomes his representative. The payments, however, of the peasants, or Ryots as they are termed, have seldom if ever been regulated, as in Ireland, by competition. Though the customs locally obtaining were infinitely various, and though practically no custom could be maintained against the sovereign's will, there was always a rule of some sort common to a neighbourhood: the Collector did not make his separate bargain with the peasant, but assessed each according to the rule adopted for the rest."*

From the above it is clear that Mr. Mill understands

* J. S. Mill's Principles of Political Economy, vol. I. page 393.

that the payments of rent are here regulated by custom and not competition: so far therefore as he is correct in this information, the above theory of farmer's rent will not apply to the Bengal Ryots, except to such of them as are themselves farmers and seek land for the employment of their capital.

But in the great Rent Case, the High Court made application of this theory of farmer's rent to a Ryottee tenure, to the no small anxiety of a large body of the tenants, who from the nature of their tenures and from the protection afforded them by law, had hitherto reposed confidence in the security of their holdings.

Under the theory of rent adopted by the High Court, the advantage of any increase of value in the produce goes entirely to the landowner; all the rent is his, whatever may be the amount of its increase.

But here in Bengal in some instances, all such increase of rent goes to the Ryot, as in the case of Istmrarees and other holdings at fixed rent. In other instances, that is, in the case of Ryots having the right of occupancy but not holding at fixed rent, the increase of rent, if occasioned otherwise than by the Ryot's agency, does not go wholly to the Ryot, nor wholly to the landowner: but is to be divided between both of them *in a fair and equitable proportion*. The Select Committee that sat on the Bill of Act X. 1859 remarked, that "the recognition of a right of occupancy in the Ryot implies necessarily some limit to the discretion of the landholder, in adjusting the rent of the person possessing such a right." This of course implies that all the rent is not the landowner's, but that

the Ryot is also entitled to some portion of it. The High Court also admitted this in Hills *vs.* Ishur Ghose in September 1862, when that case was before them for the first time.

The Court on that occasion said it might be admitted, that "up to the extent of the old rent *plus* the increase, he (the landowner) would be entitled to recover whatever amount would be fair and equitable," that is to say, he is not necessarily entitled to all the amount of increase which he assuredly would be under Malthus' theory of rent, but to such portion of it as would appear "fair and equitable," leaving the remainder of the increase to the Ryot.

In another place in the same decision, the Court remarked, "the question is how the Rupees 3 increase is to be divided. The Ryot is entitled to a right of occupancy, but only to a right of occupancy at a fair and equitable rate; but this does not entitle him to receive the *whole* of the Rupees 3 increase. *If his former rent is fixed at a very low rate, he is entitled to the benefit of that rate.*"

Not only this title to the *benefit* of *low* rent was ignored, when the case came for the second time before the Court in September last, but the principle adopted by the above Committee was lost sight of. The Court remarked, that "a Ryot with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent." Admitting that the occupancy Ryot has no other right, it would appear that even a

right to occupy the land in preference to others, implies some limit to the discretion of the Zemindar in fixing the rate of rent, the standard of which at times may vary, but nevertheless there must be a limit beyond which the Zemindar cannot ask. Remove this limit, and there is no distinction between an occupancy Ryot and a tenant at will. Nothing will then deter the Zemindar from asking the same amount of rent from the occupancy Ryot, that he generally does from a tenant at will; thus preference will be given to him who bids the highest, and not to the occupancy Ryot although the Court accords him this right as the only distinguishing feature of his holding.

If therefore you admit the right to preference, you cannot but admit also a limit to the discretion of the Zemindar. The Ryot, who has the right of occupancy has therefore not only the right to enjoy his land in preference to others, but also a right to expect some consideration with regard to his rent; and the Select Committee that sat on the Bill of Act X. remarked therefore as quoted above, that the right of occupancy implies *necessarily* some limit to the discretion of the Zemindar.

We have three classes of Rent payers in Bengal. The first class hold at fixed rent: every increase therefore in the rent goes to the Ryot. In the second class the rent ought to be divided between the Zemindar and the Ryot *fairly and equitably*. In the third class with whom the rent is fixed by competition, all the increase goes to the Zemindar, and Ricardo's theory of rent is applicable to this class only; but the High Court makes

application of that theory both to the third and the second classes; and we must follow its decision as the Law on the subject.*

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* A query was put, to a few select persons, by the Commissioners of Indian Affairs in 1832, as to how the amount payable by the occupants of the land was adjusted when received by an intermediate person. The most experienced among them, Mr. Holt Mackenzie replied, that to this "no precise answer can be given, as will have been anticipated from what I have said, in replying to the fifth, regarding the little success which has attended our efforts to ascertain and fix the relative rights of the different classes of the agricultural population." Now their relative rights have, to a certain extent, been fixed by Act X. of 1859, and we have given here the adjustment of rent as obtained under the present interpretation of law; but we mean to enter on the subject more fully in section II. of the next Chapter.

CHAPTER II.

RATE OF RENT.

SECT. I.—HISTORICAL VIEW OF THE SUBJECT. AS BEFORE THE BRITISH PERIOD. FROM THE BRITISH CONQUEST TO ACT X. OF 1859.

THE rate of rent has ever been one of the most fertile sources of disagreement between the Ryot and his Zemindar. The arbitrary exactions of rent on the part of the latter have been, and in a great measure still are, productive of much of the miseries of the Bengal Ryots.

In the Hindoo period we find there was a fixed rate of rent, or to speak more correctly, a fixed rent-charge payable in kind, so carefully proportioned to the annual produce of land, that it left very ample means of subsistence to the Ryots.

In the time of Akber, his financial minister Raja Todur Mall (from whose name the lands paying revenue to Government are still called *Mall*) first surveyed these lands in Bengal, and in assessing them followed, to a certain extent, the principle which was in use during the Hindoo period; and this continued to be the rule of assessment till the decline of the Mogul Power. There were during the Mohammedan Rule, Canongoes and Patwarrees whose duty it was to keep a faithful account of all the payments which individual Ryots had annually to make to the Zemindars; so

that the latter could not, so long as these officers were independent of them, demand more than what the Canongoe's account of the past year would shew to have been paid. But when the Zemindars became vested with criminal jurisdiction, the Ryots were overawed, and dared not appeal to the accounts of the Canongoes, who were themselves, at no distant period, made servants of the Zemindars.

Extortion and oppression were now carried to an extraordinary height. Indeed under the circumstances, it could hardly be otherwise, the Zemindars possessing in addition both Civil and Criminal powers. Protection therefore, from an undue exercise of their authority was next to impossible. Their will was *de facto* law over the Ryots, and absolute authority in a country like Bengal, could not but be a successful engine of extortion. 5712

During the first few years of the British Rule, matters did not much improve; for though the East India Company obtained the Dewannee grant from Shah Allum in 1765, yet they did not formally stand forth as Dewan till 1772, up to which period, therefore, the administration of the Revenues was conducted, for the most part, through the old native agency. But trained as they had been by the Mussulman Government to tyrannize over the people, they could not be expected to do otherwise than practise extortion and oppression upon the Ryots as before.

In 1771 the Court of Directors communicated, in their general letter of the 28th August, their deter-

mination, "to stand forth as Dewan, and by the agency of the Company's servants, to take upon themselves the entire care and management of the revenues;" and therein expressed their confidence, that the President in Council would adopt such regulations, and pursue such measures, as should ensure to the Company every possible advantage, and free the Ryots from the oppressions of petty tyrants.

Warren Hastings.—The President in Council Mr. Warren Hastings, accordingly issued a proclamation on the 11th May 1772, notifying the assumption of the Revenue management by the Hon'ble Company themselves.

The local supervisors appointed in 1769 to supervise over the native officers employed in the collection of revenues and the administration of justice in Bengal, were under this new arrangement styled "collectors" instead of "supervisors," and a dewan was joined with every such collector in the superintendency of the revenues. Among the Rules passed for the guidance of the collector and the dewan, were the following provisions for the security of the Ryots. "That the farmer (or contractor with government) shall not receive larger rents from the Ryots than the stipulated amount of the pottahs on any pretence whatever: That no *mhachots*, or assessments under the name of *mangun, bauree gundee, sood*, or any other abwab or tax, shall be imposed upon the Ryots."

Hitherto the Zemindarees had been let on farm from year to year: but it did not take long to perceive the

disadvantage of such a system. It was morever observed, that "the farmer who holds his farm for one year only, having no interest in the next, takes what he can with the hand of rigour; which, even in the execution of legal claims, is often equivalent to violence. He is under the necessity of being rigid, and even cruel; for what is left in arrear after the expiration of his power, is at best a doubtful debt, if ever recoverable. He will be tempted to exceed the bounds of right, and to augment his income by irregular exactions, and by racking the tenants for which pretence will not be wanting, where the farms pass annually from one hand to another."

It was under the above circumstance resolved to let the lands on long leases, and the first experiment of this nature was determined to be a settlement for five years. The forms and usages peculiar to each district requiring a local inspection, a Committee of Circuit was appointed in 1772 consisting of the President (Mr. Hastings), and four other Members of Government, to go about through the province of Bengal to form the new Settlement.

The Committee of Circuit first opened their operations in Nuddea, the Settlement of which was meant to be the model for other districts. The Amulnamas given by the Committee to the farmers with whom the Settlement was made, contained conditions best calculated for the protection of the Ryots from arbitrary exactions, by laying down what would be the general rate of rent, and by providing punishments should the

farmer exceed it. The following extract will at once show how the Amulnama provided in favor of the Ryots.*

"9th. Upon all lands cultivated by the Ryots in the mofussil, you are to collect the original Jumma of the last and foregoing year.

"10th. For such portion of lands, as the Ryots voluntarily undertake to cultivate, you are to give them Pottah on satisfactory terms, agreeably to which you are to receive their Rent. The Rents of such grounds as are cultivated by Ryots without any Pottah, you are to collect according to the rates of the Pergunnahs.

"11th. You are to let the Rates of the former Malguzzary and the Pottah for the present year's cultivation be the standard of your collections from the Ryots; should it be known that you exact more, you will not only have to repay the Ryots the sums which you have so exacted, but also make a proportional forfeiture to Government; and if it is represented that you are a second time guilty of any oppression on the Ryots, your Farms shall then be made Khas, and you shall pay a fine to Government."

To make these restrictions more binding upon the farmers, they were ordered to grant new Pottahs to the Ryots, the form of which was drawn out by the Committee specifying the amount of rent to be paid by each.

* See Appendix to the Sixth Report of the Secret Committee of 1772.

Such were the salutary provisions of Mr. Hastings' Government in favor of the Ryots made at the Quinquennial Settlement in 1772.

In making preparations for the next Settlement in 1776, Mr. Hastings proposed to create an office to enquire into the real value of the lands, and in so doing he observed that besides the immediate duties of this office, "many other points of inquiry would be also useful to secure to the Ryots the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions. This is not to be done by proclamation and edicts, nor by indulgences to the Zemindars and farmers. The former will not be obeyed, unless enforced by Regulations so framed as to produce their own effect, without requiring the hand of Government to interpose its support; and the latter, though it may feed the luxury of the Zemindars or the rapacity of the farmers, will prove no relief to the cultivator, whose welfare ought to be the immediate and primary care of Government."*

To this Sir Phillip Francis the celebrated Member of Hastings' Council thus replies; "The idea of *guarding the Ryots against arbitrary exaction* is just, and attainable, though not by the method proposed; but I affirm that it is wholly incompatible with the principles of a Government, which claims and exercises a right of arbitrary taxation, and whose professed object is to exact the *greatest possible revenue* from the country. Let

* Governor General's Minute, dated 1st November, 1776.

us begin with setting an example of justice and moderation to our subjects: let us proportion our demands to *our* necessities, not to *their* utmost abilities. A mild and equitable Government will gradually extend and communicate the principle on which it itself acts, to the ranks and powers subordinate to it. Tyranny creates tyranny and is obliged to support it." And further, "if they (the Zemindar and the Ryot) are left to themselves, they will soon come to an agreement, in which each party will find his advantage: the pottah is the evidence and security of the voluntary agreement."*

But Mr. Warren Hastings had observed in his Minute already quoted, that "it is the Zemindar's interest to exact the greatest rent he can from the Ryots; and it is as much against his interest to fix the deeds by which the Ryots hold their lands and pay their rents, to certain bounds and defences against his own authority;" and he pointed out that repeated injunctions to interchange pottahs have been set aside.

Another plan he had in contemplation to check the arbitrary exactions of the Zemindars, was to restore Canongoe Dufters to their former efficiency, and to re-establish the ancient revenue system of the country, "which," as was already observed, "by its useful checks from the accountant and assessor of the village, through its several gradations upwards to the Accountant General of the exchequer, was, no less calculated to

* Sir P. Francis's Minute, dated the 5th November, 1776.

protect the great body of the people from oppression, than to secure the full and legal rights of the sovereign."*

To effect this and other contemplated reforms, Mr. James Grant was appointed under the denomination of Chief Sheristadar by the Government of Sir J. Mac-Pherson, who acted as Governor General till the arrival of Lord Cornwallis.

Lord Cornwallis. But no sooner Mr. Grant entered upon his duties than his office was abolished by Lord Cornwallis as being unnecessary. He thought that to put a limit to the Zemindar's arbitrary exactions, the first and most essential step would be for Government to limit its own demand upon the Zemindars themselves. His Lordship observed, "in order to simplify the demand of the Landholder upon the Ryot, or cultivator of the soil, we must begin with fixing the demand of Government upon the former. This done, I have little doubt but that the Landholders will, without difficulty, be made to grant pottahs to the Ryots upon the principles proposed by Mr. Shore in his propositions for the Bengal Settlement. The value of the produce of the land is well known to the proprietor, or his officers, and to the Ryot who cultivates it; and is a standard which can always be resorted to by both parties, for fixing equitable rates. Mr. Shore's propositions, that the rents of the Ryots by whatever rule or custom they may be demanded, shall be specific as to their amount, that the Landholders shall be obliged within

* Revenue Consultation, 19th July, 1786.

a certain time to grant pottahs or writings to their Ryots in which this amount shall be inserted, and that no Ryot shall be liable to pay more than the sum actually specified in his pottah, if duly enforced by the collectors, will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the Landholders upon the Ryots."

Under this impression, therefore, Lord Cornwallis declared the assessment fixed by the Decennial Settlement of 1789-90, as permanent and fixed for ever.

While the Permanent Settlement was proclaimed in 1793, not only the office of Mr. Grant was abolished, but also those of the Canongoes met with the same fate. Mr. Colebrooke thought this was a radical error.*

The experience of a few years, however, shewed the error of these measures—and the Court of Directors complained on a subsequent occasion, "that if the policy of Mr. Hastings had not been departed from, or if a stop had not been put to the further prosecution of Mr. Grant's valuable labours, we should not now have to lament, that the objects of the Permanent Settlement, in as far as regards the security and happiness of the most numerous and industrious class of the community, have hitherto been so imperfectly attained, and that, instead of maintaining their rights, we have not even ascertained what they are."†

* H. Colebrooke's Minute without date, see Selection of Papers from the Records of the E. I. House, vol. I. page 378, of 1820.

† Revenue Letter to Bengal, Ceded and Conquered Provinces, 15th January, 1819, para. 38.

Lord Cornwallis is blamed here. History says, that "when it was urged upon him by Mr. Shore and others, that the Ryots were left in a great measure at the mercy of the Zemindars, who had always been oppressors, he replied, that the permanency of the landed property would cure all those defects; because 'where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenant, who holds his farm in lease, to improve that property.'"* But the landlord unfortunately has not proved so prudent, nor was it likely, under the circumstance, that he would. Mr. J. Mill observes, that when a Zemindar "engages to pay a certain annual sum to Government, which he is to make up by sums collected from the several cultivators within the district for which his engagement is made, the more he can collect from the cultivators beyond the sum which he has to pay to Government, the more he has for himself. It is his interest, therefore, to carry his exactions to the greatest possible extent; and whenever the demand upon the Ryot is not defined, and security taken against its being exceeded, every thing is pretty sure to be taken from him, which does not deprive him of the means of barely continuing his cultivation."†

The strong conviction with which Lord Cornwallis was impressed of the necessity and importance of the Permanent Settlement, rendering him impatient of the de-

* Mill's India, Wilson's Edition, vol. V. page 522.

† Observations on the Land Revenue of India, dated 15th August, 1832, by James Mill.

tails by which its completion might possibly have been retarded, must have led him to give the reply quoted above. He seems, however, to have relied a great deal on the zeal of his successors to supply his omissions, as he left a provision in the condition of the Permanent Settlement, that "the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent Talookdars, Ryots, and other cultivators of the soil; and no Zemindar, independent Talookdar, or other actual proprietor of land, shall be entitled, on this account, to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."*

"This pledge indeed," says Mr. Campbell writing in 1832, "still stands forth in the front of the Bengal Regulations; but the Government, having once shut themselves out from all direct communication with the village landholders (meaning Ryots) by permanently interposing the Zemindar between themselves and the cultivators, have hitherto entirely neglected to redeem it."†

The Court of Directors writing in 1819, observed, that "although so many years have elapsed since the conclusion of that Settlement, yet no resort has been had to the exercise of the power we then expressly

* Sec. 8 Reg. I. of 1793.

† See his paper on the Land Revenue of India, prepared at the request of the Committee of the House of Commons of 1832, published as Appendix No. 6, to their Report.

reserved, of interfering for the purpose of defining and adjusting the rights of the Ryots. We conclude, that the supposed difficulty or impracticability of the operation was the cause of this non-interference."*

The difficulty was here said to be "supposed," for "the necessary information respecting those rates," continues the Dispatch, "might, in a great measure, have been found in the registers of the Canongoes, had their office been maintained in its original state of efficiency," but that office had fallen almost to disuse long before the establishment of the British Power. There were then scarcely any data for deciding upon any disputes regarding rates of rent: "the vague term usage," says Lord Cornwallis, "was the only rule for deciding upon any question of Revenue, and the rights of those concerned in the payment of it; and custom, which varied in almost every district, and precedent might be pleaded in justification of every species of exaction and oppression."†

Indeed, the variety was so great that it was difficult to frame a general Regulation that would reach all individual cases; and moreover, to ascertain this diversity of rights, such minute local investigation was required, that it may indeed be said to have deterred Lord Cornwallis from any attempt. At the discussion which had preceded the Permanent Settlement, it was suggested that the rates at which the Ryots were actually assessed by the Zemindars at that time, might

* Revenue Letter to Bengal, dated 15th January, 1819, para. 39.

† Lord Cornwallis's Minute of the 11th February, 1793.

be taken as the maximum of future demand, but Sir John Shore objected to such a measure, alleging that it would have the effect of confirming existing abuses and oppressions.

As an alternative, therefore, the old system of mutual interchange of Pottahs and Kubooleuts was reverted to in Regulation VIII. of 1793, a system which, however, was termed, on a subsequent occasion, by the Court of Directors, as "very materially defective, in making no sufficient provision for the ascertainment of the rights in which it professed to secure the Ryots by their Pottahs." "It was of much more importance," the Court of Directors continue to observe, "for the security of the Ryots, to establish what the legitimate rates of the Pergunnahs were, according to the customs of the country; or, at all events, to have ascertained the rates actually existing, and to have caused a record of them, in either case, to be carefully preserved; than merely to enjoin the exchange ef engagements between them and the Zemindars, leaving in total uncertainty the rules by which those engagements were to be formed;" and moreover, "more seems to have been expected from its enactments (those of Reg. VIII.) in favour of the Ryots than they were calculated to effect unsupported by other institutions, and it was in fact almost wholly nugatory."*

It was further provided by Regulation VIII. that no

* Revenue Letter to Bengal, dated 15th January, 1819, paras. 45 and 46.

Zemindar should impose any new abwab or mhachoot upon the Ryots, on pain of being subjected to a fine of three times the amount imposed. Provision was also by the same Regulation made that the landholders, in concert with their tenants, should revise the abwabs and consolidate them with the land rents within a given time.

Sir John Shore.—Lord Cornwallis was succeeded by Sir John Shore. Though the new Governor General was himself as Mr. Mill says, "among the leading patrons of the Zemindary system," yet something important was expected from his Government, as he had evinced during the administration of his predecessor, some predilection towards measures calculated to secure protection to the Ryots; but very few provisions, however, tending towards that end adorn the annals of his administration. Regulation III. of 1794, of his time, only specified the Courts which were to take cognizance of disputes regarding the rates of rent; and Regulation IV. of the same year pointed only to the rates *established in the Pergunnah,* as the standard according to which those disputes were to be determined. But not long after the passing of these Regulations, Mr. Colebrooke remarked, that "there was actually no sufficient evidence of the rates and usages of Pergunnahs, which could be appealed to." The Legislature, however, continued to speak of the Pergunnah rate as an actuality for sixty-five years, till the Select Committee that sat on the Bill of Act X. of 1859, found it to be an establish-

ed fact that there was no such thing in existence as a Pergunnah rate.

Lord Wellesley.—The Marquis of Wellesley showed no tendency to follow in the footsteps of his predecessors in ameliorating the condition of the Ryot. During his administration, coercive Regulations were passed subjecting the person and property of the Ryots to the mercies of the Zemindars, whose authority the Indian Government found "necessary to strengthen," there being "reasons existing," says the Governor-General in his Despatch of 31st October, 1799, "to warrant a belief that the under-tenantry had in some instances, under the general protection afforded by the courts of justice, entered into combinations, which enabled them to embarrass the landholder in a very injurious manner, by withholding his just dues, and compelling him to have recourse to a tedious and expensive process, in order to obtain satisfaction for claims which ought not to have admitted of dispute."*

The Government, moreover, "declined," as Mr. Campbell observed,† "to define, in their legislative capacity, the great principles which should regulate the rights of the several classes connected with agriculture." He was led to think so by a declaration contained in Regulation VII. of 1799 of Lord Wellesley's administration. The declaration said that "this Regulation is not

* Para. 80.

† See Appendix No. 6 to the Report of the Select Committee of 1832, page 27.

meant to define or limit the actual rights of any description of landholders or tenants, which can be properly ascertained and determined by judicial investigation only."*

The well known aristocratic feelings of this Governor General more readily sympathised with the Zemindars than with the Ryots.** The glory of his administration lay chiefly in military achievements, and the condition of the Ryot was too indifferent a subject to deserve any particular inquiry from him.

Lord Minto.—When Lord Minto was at the head of the Government, his attention was wholly engaged in the settlement of the Ceded and Conquered Provinces. It appears from his discussions with the Home Authorities about the extension of the Permanent Settlement to those Provinces, that he did not believe in the short-comings of Lord Cornwallis' Settlement in having left insecure the necessary rights of the under-tenantry. But the defects of that Settlement were becoming more and more apparent every day, and could no longer be overlooked. Several of the most intelligent of the Judicial and Revenue Functionaries made representations on the subject, which laid bare the system of enormous exactions and oppressions that were being practised upon the Ryots.

The Government referred some of these representations to the consideration of the Board of Revenue in 1809 and 1810, and the replies which the latter received

* Sec. 15, Reg. VII. of 1799.

from the Collectors, who were required to report on the subject, fully confirmed the validity of the representations in question.

Mr. Colebrooke's Minute shews, that there was no remedy for these extortions, and that the courts of justice could do nothing, for want of definite rules for their guidance. He says, "there is actually no sufficient evidence of the rates and usages of pergunnahs, which can now be appealed to for the decisions of the questions between Landholder and Ryot." He therefore, in despair, proposed the alternative of abrogating the then existing rights of the tenantry, with a view to give them the benefit of a new beginning. He says, "in this state of matters, it should be better to abrogate most of the laws in favour of the Ryot, and leave him, for a certain period to be specified, under no other protection for his tenure than the specific terms of the lease which he may hold, than to uphold the illusory expectation of protection under laws which are nearly ineffectual."*

Under the influence of this suggestion Reg. V. of 1812 was framed. It was construed by some very high authorities as leaving no right to the Ryots. The Court of Directors subscribed to the interpretation, that where the Zemindar is left to settle as he pleases with the Ryot, all rights in the land on the part of the

* Mr. Colebrooke's Minute without date. See Selection of Papers from the Record of the East India House, page 263, vol. I. printed by order of the Court of Directors, 1820.

Ryot are actually and for the time being, extinguished.*

Mr. Colebrooke too, on a subsequent occasion, confessed the shortcomings of Reg. V. "I proposed," said he, "sometime since, a palliative remedy, which was adopted in Regulation V. of 1812, but which, I fear, is but an insufficient relief of a serious and inveterate evil: more especially as the remedy provided applies only to individual cases as they arise, and does not operate with much effect to obviate the future recurrence of disputes between other individuals."

This Regulation, however, was soon followed by Regulation XVIII. which says, "that doubts having arisen on the construction of Sect. II. Regulation V. of 1812, it is hereby explained that the true intent of the said Section was to declare proprietors of land competent to grant leases, for any period even to perpetuity, and at *any rent* which they might deem conducive to their interests." This provision was practically worse for the Ryots than any preceding ones; for it was construed to give to Zemindars the power of demanding from the Ryot *any rent* they might think proper.—"The inference," says the Court of Directors, "seems unavoidable, that the persons with whom the Permanent Settlement was made, and those who, by inheritance or purchase, may succeed them, are authorized, by the existing law, to oust even the hereditary Ryots from possession of their lands, when the latter refuse to accede to any

* Revenue Letter to Bengal, 9th May, 1821, para. 54.

terms of rent which may be demanded of them, however exorbitant."*

The Select Committee of the House of Commons, that sat about this time in England to report on the Indian affairs, were ignorant of all this. They observed in their report in 1812 amongst other things, that in legislating for the protection of the Ryots from the arbitrary exaction of the Zemindars, the framers of Regulation VIII. of 1793 had been obliged, under the circumstances, only to provide generally for the interchange of Pottahs, leaving the terms to be such as should appear to have been, or as might happen to be adjusted between the parties; and in this it was probable in the opinion of the Committee, that the expectations of the Government were fulfilled, as no new Regulation appeared to them to have been subsequently framed with a view to alter or rescind the one alluded to. We know, how sadly the Committee was mistaken in this. Ever since the establishment of the British power in this country, Zemindary exactions loudly called for legislative interference; yet nothing important was done to check the evil. Some authorities found it difficult to define any limit to the Zemindar's demand, others were scrupulous as to the propriety of such an act.

Some objected that to dictate the specific terms of every lease would have been an invasion of the rights of the property of the Zemindars. This objection,

* Revenue Letter to Bengal of the 15th January, 1819, para. 53.

however, would not hold true with regard to those who derived their property from the Permanent Settlement, for therein the Government had expressly reserved, under Sect. VIII. of Regulation I. of 1793, the right of interposing its authority in making all such Regulations. In their letter confirming the plan of the Permanent Settlement, the Hon'ble Court of Directors expressly declared, that while they confirmed to landholders (meaning the Zemindars) the possession of the districts which they then held subject only to the rent then settled, and while they disclaimed any interference with respect to the situation of the Ryots or the sums paid by them, with any view to an addition of Revenue to *themselves,* they expressly reserved the right which belonged to them as sovereigns, of interposing their authority, in making from time to time, all such Regulations as might be necessary to prevent the Ryots being improperly disturbed in their possessions, or loaded with unwarrantable exactions."* "This right," as Mr. Holt M'Kenzie said, "could not have been relinquished without an abandonment of the highest functions of Government."†

Another objection urged at the time of passing Regulation V. of 1812, was that as the Zemindars and Ryots had *reciprocal wants, their mutual necessities must*

* Letter to Bengal Government dated 19th September, 1792.

† Letter from the Right Honorable Holt M'Kenzie to Thomas Hyde Villiers, published in the Select Committee's Report, Part III. Revenue, page 298.

drive them to an amicable adjustment. Upon this doctrine, Lord Hastings, who succeeded in the administration, observed that "the reciprocity is not, however, so clear. The Zemindars certainly cannot do without tenants; but that he wants them upon his own terms, and he knows that if he can get rid of the hereditary proprietors, who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own: and such is the redundancy of the cultivating class, that there will never be a difficulty of procuring Ryots ready to engage on terms just sufficient to ensure bare maintenance to the engager."*

Another opinion (that of Messrs. Commissioners Rocke and Warring) was, that to fix the rates of the Ryots would have been exceedingly mischievous. It was grounded on the assumption, that to give the Ryots more than the bare and miserable subsistence allowed them by the Zemindars, would not make them more happy, but as they were indolent and improvident, it would only render them less productive; and that happily for the country, the profit left by the permanent assessment on the land, had not exclusively centred with the Ryot, which it must have done, had the original intention of its author been enforced. It was, moreover, assumed by the holders of this strange opinion, that by allowing the Zemindar to derive a fair profit by

* Lord Moira's Revenue Minute, dated 21st September, 1815, para. 147.

enhanced rents, a strong excitement would be given to the extension of the cultivation. Capital would be employed in the mode most conducive to augment the wealth of the country, while the advantages attendant on industry would be more generally promoted: new channels of abundance and riches would be opened and so forth.

This foolish doctrine met with merited condemnation at the hands of the Court of Directors and the Indian Government. "All this magnificent promise," said the Court of Directors, "is founded on the two suppositions, that the Zemindars in India are a provident and a productive class, and that the Ryots are the reverse." The Government of Lord Moira observed, that "The Vice-President in Council is little disposed to believe, that any rules will be required to guard against the extension of too great advantages to the Ryots; still less can he for a moment admit the position, that the Native of India, by a strange perversity of nature, requires the stimulus of misery to goad him to exertion, and that he must for ever remain insensible to the benefit, however great and manifest, which industry holds out to him. The influence of such an opinion must extend far beyond the question under discussion, and would in fact destroy all hopes of the moral improvement of the people. It appears, however, to the Vice-President in Council to be altogether at variance with the acknowledged principles of human nature. In point of fact, too, the experiment has never been tried; on the contrary, it may be much more justly said, that

the characteristic indolence and imprudence of the Indian peasantry, are the necessary results of the circumstances of their situation; and it would be unreasonable to expect the efforts of industry or the cares of prudence, from persons who cannot but feel that the laws are insufficient to protect them in the enjoyment of the fruits of the one, and still more to secure them the more distant advantages of the other."*

The Government professing such liberal views could not but be expected to interest itself in the well-being of the weak and unprotected Ryots, especially as at the head of the Board of Controul was Lord Buckinghamshire, who during the previous administration had evinced sincere solicitude for the protection of the Ryots.

Lord Moira.—As Lord Buckinghamshire was at the head of the Indian affairs at Home, and Lord Moira at Calcutta, it was sanguinely hoped that the opening of this administration would be most auspicious for the Ryots. The Government too expressed a sincere wish to help them. It says, "we are abundantly sensible that the task of ascertaining and securing the rights of the inferior classes of the agricultural population, is one of the utmost difficulty, nor can we be confident of success where all preceding Governments have failed; still however, we hope that the obstacles which have hitherto opposed the endeavours of Government in favor of

* As quoted in Bengal Despatch, dated 9th May, 1821.

that interesting class of our subjects, may be overcome by firm and persevering exertion."*

One of the principal steps that Lord Moira's Government took for the protection of the Ryots, was the re-establishment of the office of Canongoes which had been long abolished. The duty of the Canongoe was declared to be, amongst other offices, to register pottahs and to keep counterparts of the *Jumm-wassil-bankee* or account of collection, so that in disputed cases of Zemindaree demands, the Canongoe's papers might be of value in checking arbitrary exactions.

The experiment of this office commenced in Pottaspore and its dependencies, and gradually extended to Midnapore, Hidgellee, Twenty-four Perggunnahs, Jessore, Nuddea, Burrisaul, Dacca, Jellalpore, Bhaugulpore, and part of Dinagepore. But the false economy which has often counteracted the best intentions of more than one Government, soon nullified the whole scheme: the paltry allowance of a few rupees which the Canongoes received, could not make them insensible to the corrupting influences of the Zemindar's offers, and in consequence, false entries best suited to the interests of the latter became constant. Under such circumstances, the office soon fell into disuse.

While the experiment of the working of these offices was going on, the Government of Lord Moira was not blind to the evil consequences of the celebrated Regulation V. of 1812 enacted in the preceding

* Letter from Bengal, dated 17th July, 1818, para. 147.

administration. It observed that Government did not, by that enactment, bind itself to sacrifice for ever the rights of that numerous and valuable class of its subjects, or even to abstain from retracing that very step, if it should find upon consideration and experience, that it was a false one. The Court of Directors fully agreed in this view and remarked, that "this enactment was no part or condition of the Permanent Settlement; it is therefore revocable, and ought not be maintained if found to be inconsistent with that protection of the Ryots in their rights, and from those arbitrary exactions which did form, in principle at least, a part of the Permanent Settlement, and is the foundation, as it were, on which the Indian Revenue and Judicial System professed to be built."*

In the face of all this, that enactment was allowed to stand unrepealed, owing to reasons little known. Nevertheless there was no want of attention on the part of the Government to protect the Ryot, nor could they be discouraged by any objection whatever as we have already seen.

They remarked in their Despatch† to the Court of Directors, that "there is nothing in the laws when duly considered, calculated in the slightest degree to bar the Government from the adoption of such measures, as it may see fit to adopt, with the view of securing proper rights to the Ryots. We have on this head nothing to

* Revenue letter, 9th May 1821, para. 54.

† Dated 1st August 1822, para. 107.

undo. The insufficiency of the existing rules must indeed be declared, but the aim and object of Government has been uniform ; and the declaration of past failures affords the best ground on which to found the adoption of further measures calculated to secure the desired end."

With respect to the precise measures to be adopted, Lord Moira's Government intimated their intention to adjust as far as practicable, through the agency of the Collectors, the rights and interests of Ryots and Zemindars. In order, therefore, to furnish the Collectors with some data to carry out this adjustment, means were proposed regularly to record and preserve the result of Judicial decisions of every Zillah, with reference to the mehals and villages to which they applied. Proposing to carry out the above adjustment between the Zemindars and the Ryots, the Government observed, that "if the Zemindars have themselves failed to assess their Ryots and to issue pottahs on equitable terms as provided, such an interference would require no other justification than the proof that it could be expediently exercised."

The adoption of the proposed measure, however, was contingent upon the means of commanding "a sufficiency of fit instruments."

Lord Amherst.—The Court of Directors approved this measure in their Despatch dated the 10th November 1824, when the administration of the Indian Government passed into the hands of Lord Amherst. The Despatch in question observed, "should you succeed in securing to the Ryots those rights which it was assuredly the intention of the Permanent Settlement to preserve

and maintain, and should you in all cases where the nature and extent of those rights cannot be now satisfactorily ascertained and fixed, provide such a limit to the demand upon the Ryots, as fully to leave them cultivator's profits, under leases of considerable length, we should hope the interests of that great body of the agricultural community may be satisfactorily secured." "We shall have the greatest satisfaction," the Despatch added, "in receiving the result of your deliberations upon this subject."

But after a lapse of four years the Government rejoined, that under circumstances adverted to on another occasion, they could "only express their regret at being still unable to communicate to the Hon'ble Court the result of their deliberations."*

During this admininstration the Board of Revenue, on the representation of Mr. Maxwell, the Collector of Jessore, submitted to the consideration of his Lordship in Council, "the wretched condition to which the tenantry had been reduced by the relentless oppressions" of the Patneedar of Khalispore and Mohessurpassa divisions of Kismut Syedpore.†

A similar complaint had been made by the Collector of Shahabad, urging that "a speedy stop be put to the system of rack-renting"‡

* Revenue Letter from Bengal, dated 26th June, 1828, para. 29.

† Report from the Board of Revenue L. P. to the Governor General in Council, dated 25th July, 1826.

‡ Letter from G. T. Bayley, Esquire, Collector of Shahabad, dated 4th March, 1825, para. 5.

The consequence of these representations was, that both the Collectors were empowered to take up the rent cases as provided by Regulation IX. of 1825, but this remedy was pronounced by the Court of Directors "as being far from impressing them with a confidence."*

Mr. Harrington, who had hitherto watched the wretched condition of the Ryots, proposed during this administration a Regulation in favor of them, especially of such as Khodcasht, Mukruree or other Ryots having a permanent interest in the land. He said in the Preamble, that "additional Rules are necessary for the guidance of the Courts of Judicature and other public authorities, in all cases wherein they may be authorized to adjust and determine the rents payable by Ryots and other under-tenants of land."

On this Draft Regulation, Mr. Leycester, Senior Judge of the Sudder Dewanny Audawlut, recorded a Minute. He said "I am of opinion that this Draft of a Regulation if passed into law, will not be likely to produce any beneficial or practicable result." "The evil to be remedied here," he continues, "is arbitrary, and illegal exactions from the Ryot by the Zemindars, against which this proposed Regulation presents no remedy more effectual than existed before. No remedy can be at all effectual that refers them to our public functionaries, even though their present number were

* Revenue Consultation, No. 5, 8th March, 1827.

to be multiplied tenfold: we have to do with a people eminently qualified to cheat and be cheated, to suffer and to practise extortion, before whom honesty and dishonesty are held in equal honor. Written engagement alone can bind these people."* Mr. Ross, another Judge of the Sudder Dewanny, likewise recorded his dissent; so did some others. The Draft Regulation therefore remained unpassed.

Although this Regulation failed to pass into law, yet the idea of rescuing the Ryots from the arbitrary exactions of the Zemindar, was not given up. A proposition had for some time been under consideration of buying up the Zemindaree right, and *fixing* the Jumma of the Ryots, whenever a Zemindaree was set up for sale for arrears of Revenue.

This proposition had originated with the Court of Directors. In repeating their desire in 1824, they observed in their Despatch of the 10th November, that "we see nothing which should have barred compliance with our orders to purchase the lands on account of Government. As this appears to us a measure of importance for securing the rights of the immediate cultivators and other parties connected with the land, we repeat our desire that no opportunity of effecting it, without undue sacrifice, may be neglected." The Indian Government, which was then under the Provisional Governor General, Mr. Bayley, replied in 1828, that no such purchase could be made under the restriction attached, as no estate

* Revenue Letter to Bengal, dated 9th March, 1831, para. 18.

which gave a considerable net profit to the Malgoozar, could have been obtained without a considerable outlay of capital: moreover the Indian Government objected on the ground, that "the machinery employed by a Government to collect its rents, must ever be more costly than that used by an individual; public zeal cannot safely be calculated upon, when the agency is extensive, to operate with a force equal to that of private interest, and any attempt to render the agency employed at the same time simple, cheap, and efficacious, would only tend to place power in hands very likely to abuse it, and by removing control, to defeat one of the main objects of the acquisitions."*

Lord Bentinck.—The Provisional Governor General, Mr. Bayley, was succeeded by Lord Bentinck. His Lordship's sentiments with regard to fixing the rate of rent, will be best understood from the following extract from a Minute recorded by him on the 26th September, 1832.†

"In the Provinces under temporary settlement, it is unquestionably competent to the Government to concede to the actual cultivators, much of the profit arising out of the limitation of Government demand, by fixing their payments. These cultivators would appear to have the right of paying revenue of the state directly to Government without the intervention of any

* Revenue Letter from Bengal, 26th June, 1828, para. 22.

† Paras. 66, 67, 68.

middleman, in all cases where the right of the superior may not rest upon a basis unquestionably more solid than that of the cultivators themselves; but where, on the other hand, no rights have hitherto attached to the cultivators, and they have been considered as tenants at will, neither justice nor policy requires that Government should interfere with them and their superior, and attempt (what must be an extremely delicate operation) to fix the precise limit to which the demand of the latter on the former should be confined.

"Fixed rates on certain classes of soil would seem, independently of other objections, to be unjust, if intended to regulate the demand between the landlord and tenant. If intended only to regulate the demand of Government on the Malgoozar, the sole objection would be the difficulty of fixing the rate of rent with fairness and on proper data. Sir Thomas Munro has distinctly laid down the rule, that all that Government should fix is their own demand upon the Ryot for revenue, while the rent which the Ryot shall demand from his cultivating tenant, must vary according to seasons, crops, demand for particular produce, and numerous other details too minute for the Government to meddle with. There seems indeed no reason why the Government should interfere to regulate the wages of agriculture, more than that of any other description of labor.

"All that is essential to the protection of the interests of the common cultivating tenantry is, that a distinct record be kept of all contracts and agreements that may be entered into between them and the landlord,

whether such agreements be yearly or for terms of years. The interchange of written engagement, in addition to the register, should also be insisted on where an increase is demanded."

Since the administration of Lord Bentinck to that of Lord Canning, little progress seems to have been made in legislating on this important subject. We shall therefore at once pass over to the consideration of the well known Code of 1859.

RATE OF RENT.

SECTION II.—ACT X. OF 1859.—LORD CANNING'S OPINION ON THE ACT. ITS PROVISIONS WITH REGARD TO THE EXCHANGE OF POTTAHS AND KUBOOLEUTS. ITS CLASSIFICATION OF RENT PAYERS.—I. RYOTS ENTITLED TO HOLD AT FIXED RATES—II. RYOTS ENTITLED TO FAIR AND EQUITABLE RATES—RIGHT OF OCCUPANCY—WHO CAN ACQUIRE IT—WANT OF LEGISLATIVE DEFINITION OF THE TERM "RYOT"—WHAT IS A FAIR AND EQUITABLE RATE—III. RYOTS ENTITLED TO HOLD ONLY AT RATES AGREED UPON.

It was during the administration of Lord Canning that the greatest concessions were made in favor of the Ryots. In 1857 Mr. Currie introduced in the Legislative Council a Bill which was passed into law in 1859, as the tenth Act of that year. While giving assent to this Act, Lord Canning remarked, that "the Bill is a real and earnest endeavour to improve the position of the Ryots of Bengal, and to open to them a prospect

of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the Zemindars such as ought long since to have been provided."

His Lordship concludes thus—"I beg leave to add the expression of my opinion that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being."*

Mr. Currie's Act provides against the arbitrary exactions of the Zemindars, by beginning, first of all, with the simplest and most natural means hitherto known of exchanging Pottahs and Kubooleuts, which had been required, nay, even insisted upon, as we have seen, from the very beginning of British legislation in India. But unfortunately that requisition, as we have also seen, was not much heeded either by the Zemindars or the Ryots. Mr. Currie's Act too, like those it repealed, entitled Ryots to sue their Zemindar in case he withheld Pottahs. A very intelligent Officer of Government, Mr. E. A. Samuells, in giving his opinion on this Bill, remarked, "We have had abundant experience of the provision which enables the Ryot to sue his Zemindar for a Pottah; and we know that the privilege is nearly valueless. Men who are powerful enough to sue their Zemindars for Pottahs, are not the people for whose

* His Lordship's Resolution of the 29th April, 1859.

protection this Bill is intended to provide. The want of a Pottah is an uncertain evil. To incur the enmity of a Zemindar is a positive one. Ninety-nine Ryots out of one hundred will choose the lesser evil of the two. Besides, why encourage litigation? You think it is right that there should be an interchange of Pottahs and Kubooleuts. Then why not take the simplest and most obvious method of securing the object by refusing to entertain any suit not founded on a Kubooleut or in which the absence of the Kubooleut cannot be satisfactorily accounted for."

In a Petition to Government, the British Indian Association (in which the Zemindaree element predominates) said, that the Ryots had no desire to obtain Pottahs, and that it was not the fault of the Zemindars that the earliest law on the subject was rendered inoperative; if it were still made incumbent upon the Zemindars to produce the Kubooleut in order to substantiate their suit against the Ryots, even in the collection of just dues by distraint, it would be placing an embargo on their right without any fault on their part.*

After giving full consideration to these and other similar arguments, the old Pottah system was left intact, when the Bill was passed into Act.

Section II. declares that every Ryot is entitled to receive a Pottah from his Zemindar; and so every Zemindar who grants the Pottah is entitled to receive from his Ryot a Kubooleut, or an engagement in coun-

* 14th February, 1859.

terpart in conformity with the terms of the Pottah.* If the Zemindar refuses to deliver a Pottah, the Ryot has his remedy under this Act: and so has the Zemindar when the Ryot withholds the Kubooleut. The Zemindar however, cannot avail himself of the remedy, unless he has already delivered his Pottah to the Ryot, or has tendered it, which seems to be tantamount to its actual delivery.*

The remedy here spoken of is the institution of a suit under Section XXIII. before the Collector or his Deputy. But it does not seem that this remedy can be availed of by a Ryot whose term of Pottah has expired, and who is not entitled to a renewal of the same. It will solely apply to those Ryots whose right of occupancy has accrued under Section VI; or, (if such a case ever occur,) to those who have given a Kubooleut to the Zemindar without receiving from him a counterpart Pottah.

If the Zemindar refuse or delay to grant his Pottah, even on being required to do so by the decree of the Collector, the Collector may grant it himself in conformity with the terms of the decree and under his own hand and seal; such a Pottah possessing the same force and effect as one granted by the Zemindar himself.† If the parties do not agree as to the term of years for which the Pottah is to be granted to a Ryot having the right of occupancy, the Collector may fix

* Section IX. Act X. of 1859.

† Section LXXX. Act X. of 1859.

such a term as he may think proper, not exceeding ten years.*

In like manner, when a decree is given for the delivery of a Kubooleut, and the Ryot bound by the decree refuses to execute the Kubooleut,† a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as the Kubooleut executed by the Ryot himself. But the Collector cannot fix the term of the Kubooleut, though he can fix, as we have seen, that of a Pottah to be held by an occupancy Ryot; for, the right of occupancy is the right of the Ryot. It does not give the landlord any right to compel the Ryot to continue his occupation.‡

It is to be observed that while the existence of a Pottah serves to strengthen the evidence as to a title, its absence does not invalidate it.

With regard to the rate of rent paid, Act X. of 1859 classifies the Bengal Ryots into three classes, viz.

I. Ryots who can hold at fixed rates of rent.
II. Ryots who are entitled to fair and equitable rates of rent.
III. Ryots holding at rates agreed upon by the contracting parties.

With reference to the first class it is ruled, that Ryots who have held lands from the time of the Permanent Settlement, at rents not changed since, are entitled,

* See High Court Decision, Hills *vs.* Issur Ghose, 2nd September, 1863.

† Section LXXXI. Act X. of 1859.

‡ Hills *vs.* Ishur Ghose, H. C. 2nd September, 1863.

whatever the nature of their original Pottah may be,* to retain them at the same fixed rate of rent,† without being subjected to any increase. Here the main condition is, that the rate of rent they pay, may "not have been changed from the time of the Permanent Settlement." If therefore the Zemindar can shew that it *has* changed, or can prove that the rent was fixed at some period later than that of the Permanent Settlement, he can legally demand an enhanced rate of rent from the Ryots who under those circumstances, would not belong to the first class, but must be reckoned under the second.

But it is not always easy for a Ryot of these days to prove, that his rent in a particular case has never changed since the day of Lord Cornwallis; Act X. of 1859 therefore considerately provides that, whenever it shall be shewn that the rent at which the land is held by a Ryot has not changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement.‡ But the Zemindar can rebut this presumption by shewing, that the rate of rent *has* changed since the Permanent Settlement, or that it was fixed at some later period. If the Zemindar fail to shew this, the rent is to be presumed to have been held at a fixed rate from

* H. C. D. Ram Nath Bhukut, Appellant, 27th July, 1863.

† Section III. Act X. of 1859.

‡ Section XVI. of Act X. of 1859.

the time of the Permanent Settlement. Any interruption of possession, however, destroys this presumption.* But the mere transfer of possession though made subsequent to the Permanent Settlement, will not deprive the present occupant of the right to hold at fixed rent.†

These are the conditions under which an ancient tenure, existing from the time of the Permanent Settlement, falls under the first class aforesaid, viz: holdings at fixed rents. But to tenures of a later creation, no similar boon of a permanently fixed rate of rent was ever accorded, either by Act X. of 1859, or by any preceding laws. Ever since the Permanent Settlement, it had been, in cases of modern tenures, the studied endeavour of the legislature to discountenance both their permanency and their fixed rates of rent, lest the Government Revenue should suffer.

But Act XI. of 1859 however, introducing the system of Registration‡ of which we shall speak in another place, at once removed those disadvantages. All those modern tenures therefore, which are transferable, and which partake of the nature of a Talook, can now be held at a fixed rate of rent.

With regard to the second class, (that is, Ryots entitled to a fair and equitable rate of rent,) Section V. of Act X. provides, that "Ryots having right of occupancy but not holding at fixed rates as described before,

* H. C. D. Lutif-un-nessa Bebi, Appellant.

† H. C. D. Ram Nath Laull Bhukut, Appellant.

‡ Sections XXXVIII. XXXIX. XL. XLI. XLII. XLIII. of Act XI. of 1859.

are entitled to fair and equitable rates of rent." Here the main condition is, that the Ryot must have the *right of occupancy*, without holding at a fixed rate of rent like the first class Ryots.

Let us first of all examine what this right of occupancy is, how it originates, and whom it concerns.

Sect. VI. of the above Act explains, that "every Ryot, who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under a Pottah or not, so long as he pays the rent payable on account of the same." But there are exceptions to this rule. If a Ryot who has the right of occupancy with respect to a particular land, sublet it for a term or year by year to one who cultivates that land, such actual cultivator will not acquire a right of occupancy in that land, although he may thus occupy it for a period exceeding twelve years. So also is the case with regard to an engager for Zemindar's lands which, though comprehended in his Zemindary, have yet been set apart for his private use; such as *Neej-jote* and *khamar* in Bengal, and *seer* in Behar.* Moreover, where there is any written contract between Landlord and Ryot, expressly stipulating that no such right of occupancy will accrue, the provision of this Section will not apply,† although the Ryot may hold the land for any period exceeding twelve years. As a general rule, however, twelve years' possession confers the right of occupancy.

* Sect. VI. of Act X. of 1859.

† Sect. VII. of Act X. of 1859.

The holding of the father or other person from whom a Ryot inherits, shall count in the twelve years.* The right of occupancy is the exclusive right of the Ryot: the Zemindar therefore cannot compel him to continue his holding on the plea of his being an occupancy Ryot.†

This right, we may repeat, belongs neither to the Zemindar nor to any middleman. There are, however, holders who at first sight may appear to be middlemen, but are nevertheless Ryots in their essential character; such as those small holders who sublet their lands to *Corffa* Ryots. They may have accidentally placed themselves in the position of middlemen, but still in point of fact they are Ryots. For them also the right of occupancy may have originally been intended; but in a recent case the High Court seemed to think otherwise. When it was put forward in Coomar Poresh Narain Roy *vs.* Bhyrub Nath Sandyal, that the Defendants had had possession of the lands in suit for more than twelve years, and therefore acquired the right of occupancy under Sect. 17 of Act X. of 1859, the Court held, "that the Defendants being *middlemen* and *not actual cultivators*, could not take the benefit of that provision."

It would seem therefore that the Court make no distinction between a Ryot middleman and a Talookdar middleman; the mere fact of a tenant's having an underholder would lead the Court to view him as Talookdar.

* Sect. VI. of Act X. of 1859.

† B. C. D. Hills *vs.* Ishur Ghose.

The High Court further assumed, that the right of occupancy is meant only for the actual cultivators of the soil, and not for middlemen Ryots, or those who sublet their lands. But Section VI. which bestows the right of occupancy to the Ryot does not appear to admit of this interpretation; on the contrary, it would seem to raise the presumption that an actual cultivator will not at times be entitled to the right of occupancy, and that a Ryot can sublet his land without losing his rights as a Ryot; for, the said Section says, that "this rule does not apply *(as respects the actual cultivators)* to land sublet for a term or year by year by a *Ryot having a right of occupancy.*" This shews not only that when a Ryot sublets his land to an actual cultivator, such actual cultivator will not acquire the right of occupancy, but also that a Ryot may sublet his land and still remain a Ryot.

The High Court might have been quite correct with regard to the particular case above noticed, but if it be made a general rule that whoever sublets his land is not a Ryot, it will unfortunately narrow the operation of Act X. of 1859; and this must be attributed to the want of any legislative definition as to who are to be deemed Ryots under Act X.

We have examined what the right of occupancy is, and how it originates; it remains for us to investigate what would be a "fair and equitable rate of rent." The Select Committee that sat on the Bill of Act X., in reporting on Sect. V. remark, that they "have in this Sec. and Secs. XVII. and XVIII. endeavoured to lay

down rules by which the fairness of the rates may be ascertained." It is laid down in Section V., that in a case of dispute, the rate previously paid by the Ryot shall be deemed to be fair and equitable, unless the contrary be shewn in a suit by either party under the provisions of this Act. According to Section XVII., "the prevailing rate payable by the same class of Ryot for a similar description and with similar advantages in the places adjacent," is to be deemed fair and equitable. Section XVIII. only lays down in what cases abatement of rent will be fair.

These are the rules which the Select Committee have endeavoured to lay down to enable the Courts to test to a certain extent the fairness of a rate of rent. They said, they only "endeavoured" to present some rules, but were not confident of their correctness. The High Court adds to these rules a principle under which the fairness of a rate of rent may in its opinion be arrived at. It says, "the principle is, that what is agreed upon by others willingly and of their own free will must be a fair rate, in as much as the people would not enter into arrangements under which they must incur a loss, but it must be presumed, do make such engagements as will ensure them a fair profit on their capital and a fair return for their labor."* It may strike one that, as far as the rate of rent is concerned, this principle makes little or no difference between the occupancy Ryots and those who obtain their lands by

* H. C. D. Hills *vs.* Ishur Ghose, 2nd September, 1863.

competition. But we know, it was the express intention of the legislature to make some difference between them, and accord some special consideration in favor of the former. The Select Committee above referred to observe, as we have had occasion to notice elsewhere, that "recognition of a right of occupancy in the Ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right."

No such limit to the discretion of the landowner is implied in favor of the tenants at will. With them the landowner has every right to name his own rate of rent, be it fair or unfair. If it be so high as to leave not even the bare necessaries of life to the Ryot, nobody will, according to Mr. Mill's exposition, engage for the land. If the rate of rent leave something for subsistence, though nothing for profit or even for the comforts of life, still numbers would in the present state of Bengal, compete for the land. But such a rate is not necessarily fair, though cultivators may engage for the land "willingly and of their own free will;" nor is it fair and equitable within the meaning of Act X.

With regard to the third class enumerated above, the Ryots have not the rights of occupancy nor are they entitled to Pottahs at fair and equitable rates but only at such rates as may be agreed on between them and the person to whom the rent is payable.*

* Sect. VIII. of Act X. of 1859.

CHAPTER III.

ENHANCEMENT OF RENT.

THE LIABILITY OR NON-LIABILITY OF DIFFERENT RYOTS TO ENHANCEMENT UNDER CODE OF 1793—UNDER SUBSEQUENT LAWS —UNDER ACT XI. OF 1859—GROUNDS OF ENHANCEMENT— REMARKS THEREON—WHAT THE COLLECTOR TO BEAR IN MIND.

So long as the Zemindars are held to be the actual proprietors of the land, it is natural that they should exercise their proprietory right to the best of their interest; and nothing could be so much apparently to their interest, as the discretionary power of enhancement which as proprietors, it is just and equitable that they should possess.

It is equally just and equitable, too, on the other hand, that the Ryot who by long occupancy has acquired a sort of right in the land should receive some consideration. The Select Committee that sat on the Bill of Act X. 1859 say, that the "recognition of a right of occupancy in the Ryot, implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right." But the question occurs what Ryots are to be considered to possess this right? Mr. Shore says, that "prescription is the best rule to follow. Those who have for a course of years occupied the same field at the same or equitable rates, are held to possess the right of continual occupancy."

But how many years' possession will confer that right, is left undecided even by Act XI. of 1822, which first made mention of Ryots' "having prescriptive rights of occupation." It was not till 1859 that any clear definition of it was given.

Sect. VI. of Act X. of that year rules, that "every Ryot who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under a Pottah or not, so long as he pays the rent payable on account of the same."

For want of a definition like the above, the Ryot of former days, though of fifty years' standing, could not claim to occupy his land merely on the payment of his rent.

If the old laws were deficient in this respect, they were nevertheless clear as to the Ryots who were to hold at fixed rates, and which of them to be subject to enhanced rates.

Reg. VIII. of 1793, Sect. 51, cl. I. ruled, that "no Zemindar or other actual proprietor of land shall demand an increase from the Talookdars dependent on him, although he should himself be subject to the payment of an increase of Jumma to Government, except upon proof that he is entitled so to do either by the special custom of the district, or by the conditions under which the Talookdar by receiving abatements from his Jumma, has subjected himself to the payments of the increase demanded, and that the lands are capable of affording it."

Although this provision might not have frequently been acted upon, yet its wording goes to prove, that enhancement was not meant for a general rule, but only an exception.

Of the tenures then existing, Sect. 49 of the above Regulation made express exemption of the Istemrarees from increase of rent, provided they had been held at a fixed rent for more than twelve years antecedent to the Decennial Settlement.* Regulation XL. of that year specially exempts from enhancement Leases for grounds for the erection of dwelling-houses, or buildings for carrying on manufactories, or for gardens or for such other purposes.

In 1838 the Sudder Board of Revenue was of opinion, as may be seen in their able Review of the Sale Law, that the Laws of 1793 had the following effect on the different sorts of tenures, with regard to their liability or non-liability to enhancement.

Tenures *liable* to enhancement were,

I. Talooks existing at the Decennial Settlement, which had been proved liable in the manner laid down in Sect. 51, Reg. VIII. 1793.

II. Talooks created *since* the Decennial Settlement.

III. Holdings of Ryots or cultivators of the soil with or without engagements.

Tenures *not liable* to enhancement were :—

I. Istemrarees.

* The Decennial Settlement was made in 1789 for ten years with the condition of making it permanent on the approval of the Court of Directors. This Settlement was finally declared Permanent in 1793.

II. Leases for a term of years or in perpetuity, granted for the erection of dwelling-houses, or buildings for manufactories, or gardens, or offices for such buildings.

III. Talooks existing at the settlement which were not proved at that time or subsequently to be liable to increase as provided in Sect. LI. Regulation VIII. of 1793.

In 1812 Regulation V. provided, that no Ryot "shall be liable to pay an enhanced rate, though subject to enhancement under subsisting Regulations, unless written engagements for such enhanced rent had been entered into by the parties, or a formal written notice served on such cultivator or tenant at the season of cultivation, viz. on or before the month of Jeyth, notifying the specific rent," to which he would be subject in the following year.

Hitherto there had been no such check upon the Zemindars. This provision therefore, being not only the first of its kind, but also a most salutary law, was allowed to stand in all the successive Regulations and Acts on the subject.

To the above exemptions from enhancement, Regulation XI. of 1822 added, under some restrictions, "village Zemindars, Putneedars, Mofussil Talookdars, or other persons having an hereditary transferable property in the land, as also *khoodcast*, and *kudmee* Ryots or resident and hereditary cultivators having a prescriptive right of occupation."

Act XII. of 1841 was, however, silent with regard

to village Zemindars, Putneedars, Mofussil Talookdars, and other holders in the N. W. Provinces, whom Lord Moira's Government often confounded with holders in the Lower Provinces. But it maintained the provision in favor of *khoodcasht* and *kudmee* Ryots, as contained in the preceding Regulations on this subject. This Act, however, made further provisions for exempting from enhancement by Auction-purchasers *bona fide* leases for mines, tanks, canals, places of worship, burying grounds, Jungle-clearings, or like beneficial works; as also farms granted in good faith for specified areas, and for terms not exceeding twenty years under written leases, registered within a month from the date of their execution. But all these were to be exempted from enhancement, only under the condition of the leases being held at *fair rents*.

By the above enactment this condition was further extended, though for the first time, to leases of grounds for the erection of dwelling-houses or buildings for manufactories.

The latest enactment, Act XI. of 1859, too, follows the same principle and more explicitly empowers the Auction-purchaser, and the Auction-purchaser only, to enhance the rent of these tenures; but under the condition, that "he can prove the same to have been held at what was originally an unfair rent, and the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise."

This is indeed a boon to the Auction-purchaser who

had originally been debarred from any interference whatever in the *Bastoo* and *Bagat* tenures.

The greatest boon this enactment conferred upon the Ryots is, that by the system of Registration as therein prescribed, all Talookdaree or other similar tenures, as well as all farms for a term of years, may be protected from enhancement, not only against all auction purchasers of the Zemindarees, but also even against Government, should the Ryot be willing to have it so secured.

This precious security, as will be observed, relates only to holders of farms and of Talookdaree or other similar tenures, but does not extend to leases, the holders of which have, by twelve 'years' possession merely acquired the right of occupancy, and have no other rights incident to Talookdaree or other similar tenures. It might therefore be asked how far these occupancy Ryots, who cannot aspire to registration, are subject to enhancement?

With regard to them, Sect. XVII. of Act X. of 1859 enacts, that "no Ryot having a right of occupancy shall be liable to an enhancement of rent previously paid by him, except on some one of the following grounds:—

I. That the rate of rent paid by such Ryots is below the prevailing rate payable by the same class of Ryots for lands for a similar description and with similar advantages in the places adjacent.

II. That the value of the produce or the productive powers of the land has been increased otherwise

than by the agency or at the expense of the Ryot.

III. That the quantity of the land held by the Ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

The justice and policy of enhancement on the second ground have, of late, frequently been called into question. It has been said that under the present progressive state of commerce, the value of the produce of land increases without any effort on the part of the Zemindar, and it is therefore unjust to give him any share in the increased value of the Ryot's labor when the Zemindar undergoes neither risk nor expense.

It is on the other hand maintained that the Zemindar being the proprietor of the land, it is just and equitable that he should be entitled to a portion of the profit as a return for the use of his land.

At a discussion which began in 1849 for the amendment of the Sale Law then existing, this objection was put forward by a well-known Officer of Government, but Mr. Henry Ricketts who took part in that discussion, replied thus: "Why should not the advantage of the increase of price go to the lease-holder? The speculation, the risk, were his, not the Zemindar's; he would have suffered the loss had prices fallen."

But Lord Cornwallis who conferred upon the Zemindars the proprietory right of lands comprised in the Zemindaree, seems to have thought that the Zemindar has in some cases a right to a portion of such increase in

the value of the produce of the land; he says "the Zemindar might raise the profit of his estate by encouraging more valuable articles of produce." Ever since the same opinion seems to be prevailing in the ruling body, and it may be consistent with the principles of political economy, but the Ryots do not understand the justice or necessity of such a principle, especially as they find very few Zemindars active in raising the value of the produce of their lands by contributing to enterprises calculated to facilitate internal communications, or in making any of those improvements which theorists declare to be the effect of the Zemindaree system.

Whatever may be the dislike of the Ryots to the principle of the enhancement of rent, they have this consolation, that the law does not look upon enhancement with indulgence;—on the contrary, it would seem, that the Law has discountenanced it whenever with justice it could do so. The language of the law has invariably been to the effect, that no Ryot shall be liable to enhanced rates of rent except in certain special cases. "*No under-tenant or Ryot,*" says Sect. XIII. of Act X. 1859, "who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, *shall be liable to pay any higher rent* for such land than the rent payable for the previous year, *unless* a written notice shall have

been served on such under-tenant or Ryot in or before the month of Cheyt." Similarly Sect. XVII. of the above Act declares, that "*No Ryot* having a right of occupancy *shall be liable* to an enhancement of the rent previously paid by him *except* on some one of the grounds" therein specified.

From the drift of the above expressions it would seem, that enhancement of rent is not meant to be the general rule, but only an exception. Some of the Ryots, however, who have the right of occupancy as noticed before, deem it a hardship to be made at all liable to enhancement;—they must bear in mind that they are only incidentally liable, but not unavoidably subject to it. The High Court observes, that "Sect. XVII. does not direct that the rent of the previous year shall be enhanced if the value of the produce has been increased otherwise than by the agency or at the expense of the Ryot, but merely that it shall be *liable* to enhancement on that ground, that is to say, liable, if the former rent is not fair and equitable under the new state of things."*

Even this amount of liability will be merely nominal, if the increase of value of the produce be not a permanent increase, nor would the liability be of any effect, "if the increased expenses of cultivation should be equal to the amount of the increase of value of the produce."†

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* H. C. D. Hills *vs.* Ishur Ghose, 22nd September, 1863.

† Ibid.

But where the liability is no longer nominal, but is grounded on all the requirements of law, the Ryots of this class shall, under the present interpretation of law, have to make over all the net increase to their landholder as his rent. But the landholder in order to have that net increase to himself, must apply to the Collector to adjudicate his claim under this Act, instead of appropriating it to himself by his own authority.

The Collector must bear in mind, that the enhancement relates to the ensuing year, and not to the past, and moreover "must be guided by all the circumstances of the case. In the absence of proof, on the contrary, he may take the old rent as a fair and equitable one with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased, and whether those circumstances are likely to continue, and whether the value of the produce is likely to keep up to the present average in the ensuing year. He must also consider whether the cost of production, including fair and reasonable wages for labor and the ordinary rate of profits derived from agriculture in the neighbourhood, has increased, and he must make a fair allowance on that account."*

By wages of labor is meant "not only the wages of hired labourers paid out of capital, but also the wages of the Ryot himself or of his family, and also, when the rent is paid in money, the labor and expenses of

* Hills *vs.* Ishur Ghose, 2nd September, 1863.

carrying the produce to market," such as cart hire, bullock hire, coolie hire, boat hire, train hire, or the like, but whatever is paid to the boy who tends bullocks employed in the agriculture, and the expense necessary for the feed of those bullocks, shall also be included in the cost of wages. So also any interest which the Ryot may have to pay to his Mahajun or creditor on account of the loan of subsistence money or rice, may go to him as interest on his wages.*

The agricultural "profit" spoken of above, is the profit of capital employed in agriculture, and includes interests and compensation for risk of money employed in purchasing and replacing the stock, which consists of bullocks, cow-sheds, granaries, implements of agriculture, and seed. The house of the Ryot is not included in the stock, and if a fair rate of wages is allowed, the tenant must find his own house.*

In ascertaining what amount of increase to the original rent would be necessary to make it fair, no rule of proportion need be observed. The Court observes, that "the Act does not say that the increased rent shall bear the same proportion to the original rent as the increased value does to the original value, but merely that the rate shall be fair and equitable."*

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* Hills *vs.* Ishur Ghose, 2nd September, 1863.

CHAPTER IV.

ABATEMENT OF RENT.

GROUNDS OF ABATEMENT—EVERY RYOT IS ENTITLED TO CLAIM ABATEMENT WHETHER HE HAS THE RIGHT OF OCCUPANCY OR NOT.

IF the Ryots are subject to enhanced rates of rent, they may with justice claim an abatement of their rent under circumstances, the reverse of those which authorize enhancement. Sect. XVIII. of Act X. of 1859 particularizes them.

I. If the area of the land has diminished by diluvion or otherwise, or

II. If the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the Ryot, or

III. If the quantity of land held by the Ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him, the Ryot may claim abatement of rent.

Sect. XVIII. laid down the rule, that under the circumstances mentioned above, "every Ryot *having a right of occupancy*" shall be entitled to claim an abatement of rent. This led to the belief that Ryots having right of occupancy only and no others, are entitled to claim an abatement of rent. But the High Court were of opinion, in Ram Chunder Bose, appellant, that "the

Law does not confine the right to claim abatement to Ryots with right of occupancy only. Sect. XVIII. lays down certain rules regarding such claims when preferred by such Ryots. But other Ryots and under-tenants can also sue for abatement when they can show that they are justly and equitably entitled to it."*

If in accordance with this view of the High Court, an ancient Ryot holding at a fixed rate were to apply for and receive abatement in his rent, he would, it would seem, lose his privilege to hold at a fixed rent, for the obvious reason of his rent having undergone a change.

* No. 482 of the 17th August, 1863.

CHAPTER V.

PAYMENT OF RENT.

TO BE REGULATED BY THE TERMS OF THE POTTAH. THE ZEMINDAR TO GIVE A RECEIPT. LIABILITY OF WITHHOLDING A RECEIPT. WHAT THE RYOT IS TO DO IN CASE THE ZEMINDAR REFUSES TO RECEIVE RENT. CLAIM OF SET-OFF UNTENABLE.

ACCORDING to the sketch of the plan of the compilation given in the Introduction, we have hitherto confined our attention to the subject of *Rent* as regards its adjustment, and the fluctuations of rate to which it is liable. We have now to advert to certain points connected with the Payment of Rent.

The payment of rent is regulated by the terms of the Pottah which specifies the amount of annual rent; the instalments in which it is to be paid; and if the rent is payable in kind, the proportion of produce to be paid.* After the expiration of the day fixed for the payment of rent, whether such payment is to be in full or in part, the Zemindar shall ask for his due, and the Ryot pay it; and when so paid, the Zemindar shall give him a receipt; but if the Zemindar withholds the receipt, the Ryot shall be entitled to recover from him damages not exceeding double the amount so paid. So also if the Zemindar gives a receipt but refuses to

* Section II. of Act X. of 1859.

specify therein the year or years on account of which the rent is acknowledged to have been paid, he shall be deemed to have withheld the receipt and therefore shall be liable to the same extent.*

The Zemindar is to demand rent from the Ryot only to the extent specified in the Pottah or due to him under Act X. of 1859; if, therefore, he exacts anything in excess, whether as abwab or under any other pretext, he has made himself liable to the extent mentioned above.†

If, however, the fault lies on the part of the Ryot who being asked to make payment of his rent, refuses or avoids to do so, such Ryot has subjected himself to liability to ejectment and to other consequences to be detailed in the following Chapters.

Besides enforcing those consequences upon the Ryots, the Zemindar can, under Section XXIII. of Act X. of 1859, also enforce the payment of his own demand; but in so doing he must satisfy the Collector before whom the suit is to be instituted, that an arrear of rent is actually due to him. Section XX. of the above Act defines what is to be deemed an arrear of rent. It says, "any instalment of rent which is not paid on or before the day when the same is payable according to Pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to

* Section X. of Act X. of 1859.

† Ibid.

established usage, shall be held to be an arrear of rent under this Act."

It not unfrequently happens that the Zemindar actually refuses, for purposes of his own, to receive from the Ryot the rent due to him, in order to entail upon the Ryot, on the plea of non-payment, the serious consequences of ejectment or the like. Act VI. of 1862 therefore considerately provides, that in such a case the Ryot shall deposit with the Collector the sum due from him as rent, and the Collector shall give him a receipt thereof.

Section IV. of the above Act provides, that "if any under-tenant or Ryot shall, at the Mal Kutcherry for the receipt of rents or other place where the rents of the land held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender to the Zemindar or other person in receipt of rent of such land, and if the amount so tendered shall not be accepted, and a receipt in full forthwith granted, it shall be lawful for the under-tenant or Ryot, without any suit having been instituted against him, to deposit such amount in the Collector's Court, to the credit of the Zemindar or other person aforesaid, and such deposit shall, so far as the under-tenant or Ryot and all person claiming through or under him are concerned, in all respects operate as and have the full effect of a payment then made by the under-tenant or Ryot of the amount deposited to such Zemindar or other person."

Sect. V. directs that the Collector shall receive such deposit on the application of the Ryot made in writing under the declaration, (as set forth in Schedule A. of the above Act), that he tendered the payment, that the Zemindar or his agent refused to accept the sum tendered, and that the sum so tendered is the full amount which he owes to the Zemindar. If the declaration shall contain any averment which the person making it knows or believes to be false, such person shall be subject to punishment for giving or fabricating false evidence. When the rent is thus deposited the Collector shall issue notice to the Zemindar to receive it.

In connection with the subject matter of this Chapter, it is important to inquire how far the rent paid by the Ryot in each year can be credited by the Zemindar for arrears of the preceding years. The High Court in Tara Monee Dassee *vs.* Kally Churn Surmah* "are inclined to think that the payments in each year must be presumed to be for the current year till the contrary is shewn." Five days after this case was decided, the same Court remarked in Ahmuty *vs.* Brodie,† that "it is a rule of law that if a debtor have two distinct debts due to one creditor and make a general payment without saying to which debt the money is to be applied, it is in the option of the creditor to appropriate the payment to which account he pleases." The inference of this last remark would

* 17th February, 1864.

† 22nd February, 1864.

be that if the debtor particularly specified that the rent paid shall be credited for the current year, the Zemindar receiving the same shall be bound by that specification, and give a receipt for the current year, although an arrear for the preceding year may remain due to him at that time. But such a receipt for the current year will raise the presumption of the previous rent having been paid; the Zemindar therefore, to escape this presumption, may refuse to accept the rent tendered for the current year till the arrears of the preceding years be paid.

We must not omit to notice here also, that where a Zemindar stands indebted for any sum to his Ryot, such Ryot cannot, when sued for arrear of rent, plead his due as a set-off against the rent claimed by the Zemindar, unless there be an agreement to the contrary; the reason being that a plea of set-off when disputed, involves an amount of judicial inquiry which the Revenue Courts are not competent to hold. The High Court in Moulvy Abdool Ally *vs.* Bany Madhub Bagchee,* remarks, "Courts of the restricted nature these are, under Act X. of 1859, instituted for the sole purpose of deciding suits and cases ordinarily arising between landlord and tenant, cannot be supposed to have been intended to take up and determine other questions of civil rights, or to give redress in matters cognizable by the ordinary Civil Courts of the country. In fact, the Courts un-

* 5th October, 1861.

der Act X. of 1859 have no concurrent jurisdiction with the other Civil Courts, or Courts of first instance; and the cases cognizable by the one are specially declared not cognizable by the other. Hence it appears to us that the general power vested in the Courts of Civil Judicature, to determine pleas of set-off in certain cases, does not extend to the Courts constituted under Act X. of 1859. When, therefore, the claim set up as a set-off is disputed or requires adjudication, it is only when the matter of the set-off is one over which these Courts have express jurisdiction, that they can proceed to try and determine its merits. Now, in the present case before us, as the lease itself provides that 'the lessee shall, with the permission of the lessor, defray the costs, and, on submitting his accounts, receive credit for the amount from the sum due for rent and get receipts,' if the lessee had come up with his accounts passed and admitted by the lessor out of Court, and the lessor had refused or objected to allow credit for the same, we should not have hesitated to hold the amount so adjusted, to be a good and valid set-off against part of the rent sued for. But as the accounts themselves are disputed, and each item involves a regular judicial inquiry, as to whether it constitutes an expense contemplated by the terms of the lease or not, and cannot be held to be a set-off to the claim, until its true character and validity have been determined, we do not hesitate to declare that such inquiries are foreign to the jurisdiction of the Revenue Courts, and cannot be tried by them."

CHAPTER VI.

RYOTS' LIABILITY TO EJECTMENT AND CANCELMENT OF THEIR TENURES.

SECTION I.—EJECTMENT FOR NON-PAYMENT OF RENT. UNDER OLD REGULATIONS THE ZEMINDAR COULD EJECT RYOTS OF HIS OWN AUTHORITY. ACT X. OF 1859 PUTS A STOP TO THAT AUTHORITY. EJECTMENT ON THE SALE OF A ZEMINDAREE FOR ARREARS OF REVENUE. ITS INJUSTICE REMARKED BY MR. HOLT M'KENZIE. THE SUDDER BOARD OF 1838 CONTESTED THAT EJECTMENT ON THE SALE OF ZEMINDAREE WAS NOT CONTEMPLATED BY THE CODE OF 1793. HISTORY OF THE SUBJECT. MR. HALLIDAY'S PROPOSAL FOR THE IMPROVEMENT OF THE SALE LAW. INDIAN GOVERNMENT'S REMARKS THEREUPON. PROVISION OF REGULATION XII. OF 1841. LORD AUCKLAND'S REMARKS THEREON. THE INSECURITY OF UNDER-TENURES WAS AGAIN ON THE TAPIS IN 1849. MR. H. RICKETTS' DISCUSSION ON THE SUBJECT.

WE propose to examine in this Chapter the ejectment of the Ryot and the cancelment of his tenure or lease.

It is the duty of every Ryot to pay his rent to his Zemindar, but if he unjustly withholds it, the Zemindar, in his turn, has the right to eject such a Ryot, and to let the land to some other person whom he thinks likely to prove more punctual. This right of the Zemindar extends over all his Ryots whether holders of permanent tenures or of temporary leases.

Under old Regulations, however, the Zemindar was permitted to exercise this right of his own authority,* leaving the party ejected to seek justice from the Courts. Lest, therefore, any selfish and unjust exercise of this power of the Zemindar affect, as it often did, the rights of the prescriptive holders, it is wisely provided by Sect. XXI. Act X. of 1859, "that no Ryot having a right of occupancy or holding under a Pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act." All other Ryots, therefore, who do not fall under these two conditions can be ejected for arrears of rent by the Zemindar, without any interference from any Court.

But if he requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period, after the expiration of his lease or tenancy, he shall under Sect. XXV. make application to the Collector, and the Collector shall proceed thereupon to enquire into the case, and pass orders in the manner provided for suits under Act X.

If however, the lease be of the kind denominated *ticca Zur-i-peshgee* or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or

* See Regulation VII. of 1799, Sect. 15, cl. 7; and also Regulation VIII. of 1819, Sect. 18, cl. 4.

by the usufruct of the land, the parties must proceed by suit in the Civil Court.*

Besides the grounds of ejectment for non-payment of rent detailed above, there is another which takes place on the public sale of Zemindarees for arrears of Revenue. This provision may have been dictated by a cautious policy of securing the public Revenue from diminution. It had been apprehended that if such sales of Zemindarees did not in any way affect the under-tenures, however recently created, every Zemindar might take advantage of it and create, in favour of his friends, profitable holdings at a reduced rent or Jumma, and then give up his Zemindaree, to the prejudice of the Government Revenue fixed thereon.

Regulation XLIV. of 1793, therefore rules, that whenever the whole or a portion of the lands of any Zemindaree shall be disposed of at public sale for arrears of Revenue, all engagements which the proprietor shall have contracted with under-holders shall stand cancelled from the day of sale, except such as are for Talooks which have been exempted from any increase of assessment at the forming of the Settlement, in virtue of the prohibition contained in cl. 1, Sect. 51, Regulation VIII. 1793; as also those which shall have been entered into for erection of dwelling-houses, for gardens, &c.

With the exception of these, therefore, the sale-purchaser could eject tenants and dispose of the lands, as if those had never been engaged for. Mr. Campbell says

* Section XXV. of Act X. of 1859.

that the new purchaser acquires the right, "not only in the few fields belonging to the defaulter, but in all the fields, within the boundary of his entire Zemindaree or Land Revenue contract, belonging even to other contractors or third parties, whose dues may have been paid in full to the defaulting Zemindar." "Greater injustice indeed," says Mr. Holt M'Kenzie, "no Government ever inflicted upon a country."

But the Sudder Board of Revenue took a different view of the subject. Having had occasion to discuss this point in a Report to the Government on the 13th March 1838, they remarked that nothing like ejectment of any Ryot was contemplated in the original Sale Law. It simply declares that *engagements* are cancelled on the non-payment of Rent, but that they could be again revived by Ryots, if they were willing to do so on the payment of the customary rate of rent.

The following extracts from that able Report will give a history of the law in question.

"The first enactments on the subject," say the Board, are embodied in Sections V. VI. and VII. of Regulation XLIV. of 1793:* and after quoting these Sections they proceed to observe, that in this Regulation "nothing like ousting or disposing of the Talookdars and Ryots was contemplated. Their *engagements* were cancelled, and the Zemindar was at liberty to collect *from them* whatever the former proprietor would have been entitled to collect. This obviously implies, that the

* 97th Para.

'Talookdars and Ryots' were to remain in possession, an inference which is, if necessary, strengthened by the difference observable in the mode of treating 'under-farmers,' of whose tenures it is expressly said, that the new Zemindars might collect, not from the under-farmers, which would be the analogous mode of writing with that used for Talookars, but 'from the Ryots and the cultivators of the land let in farm;' *i. e. farmers* were to be ejected; Talookdars and Ryots were to be *held* in *possession*, subject to enhancement of rent.* Thus by the expression and spirit of the laws of 1793, a sale for arrears of Revenue, had the following effect upon the different sorts of tenures below enumerated:—

Firstly. Istemrardars were left unmolested, liable to no increase and secure from dispossession.

Secondly. Talooks existing at the settlement, which were not proved at that time, or subsequently, to be liable to increase as provided in Sect. 51, Regulation VIII. of 1793, were left as they stood before the sale, *i. e.* the proprietors were not liable to dispossession, and subject to no enhancement except upon a regular suit by the Auction purchaser to *prove* his title to enhance their rents.

Thirdly. Talooks existing at the Decennial Settlement, which have been proved liable to increase in the manner laid down in Sect. 51, Regulation. VIII. of 1793, were liable to enhancement by the Auction purchaser, but not to dispossession of the Talookdar.

* 98th Para.

Fourthly. Talooks created since the Decennial Settlement were liable to enhancement by the Auction purchaser, but *not* to dispossession of the Talookdar. They were, in fact, precisely in the same predicament with the third class.

Fifthly. Farmers holding under leases made since the Decennial Settlement were liable to immediate dispossession.

Sixthly. Ryots and cultivators of the soil holding with or without engagements, were liable to enhancement, but not to dispossession.

Seventhly. Holders of leases for a term of years, or in perpetuity, granted for the erection of dwelling-houses, or buildings for carrying on manufactures, or gardens or offices for such buildings, were liable neither to enhancement nor to dispossession."*

The Sudder Board however proceed, that "when Regulation VIII. 1819 was enacted, a very different view was taken of the laws above quoted, and the preamble to that Regulation shews clearly, that its framers supposed the law to give a purchaser the right of immediate ejectment, instead of a right conditional upon acceptance or non-acceptance of terms formally offered, which it has been explained was all that the Regulations hitherto bestowed upon an Auction purchaser; and Sect. II. of Regulation VIII. of 1819 expressly quotes Sect. V. Regulation XLIV. of 1793, as an authority for 'cancelling of *tenures*' after a

* 100th Para.

sale, though, as already shown, Regulation XLIV. of 1793 only cancelled *engagements*, and by no means warranted the cancelling of *tenures* which amounts in fact to dispossession and ejectment."*

The next important enactment on the subject was Regulation XI. of 1822 passed during the administration of Lord Moira. With regard to this Regulation, the Sudder Board of Revenue in their report above quoted remarked, that "the full power given by a sale to auction purchasers to annul tenures (not leases only) and to eject tenants, is taken completely for granted in Regulation XI. of 1822, so much so as hardly needing to be enacted, but rather announced as an undeniable axiom."

This Regulation of 1822, however made some consideration for the under-tenants. Sect XXXI. provided, that it shall be competent to the Governor General in Council when he shall see proper at any time before a sale of arrears shall have been actually made, to direct it to be sold subject to the leases, assignments or other encumbrances with which a proprietor in possession, his ancestors, or predecessors may have burthened his assessed estate, or to such of them as shall appear proper.

But this provision, however, was never acted upon, nor was any other "security in the stability of the under-tenures" provided. Proposals were from time to time made to revise the existing law in order to restrict the Zemindar's authority with respect to under-

* 106th Para.

tenures. But the Sudder Board in 1834 were of opinion, "that, until the local Judicature be made every where adequate to the wants of society, the proposed restriction on the resumption of under-tenures would be highly unjust to the present proprietors, and full of risk to the Government interests, in as much as it would greatly depreciate the value of the proprietory right, which the Collector sells for the recovery of a balance of Revenue, and seriously obstruct the realization of the current resources. They are not, however, insensible to the superior protection and encouragement which would be afforded to agriculture, from the rules suggested by Government, on a comparison with the provision contained in the Sect. XXXI. of Regulation XI. 1822, which they have already represented to be a dead letter."*

Government however directed the Board to submit a Draft of a new Regulation regarding sales, which would generally define the power of an auction purchaser over the under-tenures.

Draft after Draft was submitted by the Board, but was thrown out for some fault or other. The subject was much discussed up to 1841, and many useful suggestions were often made. Amongst others Mr. (now Sir) F. J. Halliday in reviewing the Board's Draft remarked thus:†—

"Sale for arrears of Revenue is a great evil, though an unavoidable one. It is our duty to make the evil

* 19th September, 1834, para. 48.

† 14th October, 1839.

no greater than is absolutely necessary for the purpose for which sales are provided. Perhaps the greatest of all evils belonging to sales is the insecurity which they bring upon under-tenants of all descriptions, and the mischievous power of annoyance and interference and extortion, which they give to a new auction purchaser over his under-tenants. If we can ameliorate nothing else belonging to sales, we ought, at all events, to endeavour to amend this; for if ever any great improvement is to happen to this country, it must come by means of the introduction, as *under-tenants* of Zemindars, of men of skill, capital and enterprize. As the Law now is, (and the new Law will not much improve it,) no man of skill would or could have anything to do with under-tenures; at least no man could without great risk. Conceive, for instance, the contingency to a farmer for 20 years, desirous of laying out, or perhaps having laid out large capital on his farm, of being threatened, (as he usually would be,) with a suit at law by every new purchaser, and being put on his proof once every two or three years, or as often as a sale might take place; or conceive, what is still worse, the condition of poor and more defenceless tenants under such a system. Clearly no such interference should be permitted if it can be avoided.

"Now the only reason which can at all justify the power given by Law to auction purchasers, and the effect produced by law after a sale on under-tenants, is the necessity of securing the Revenue of Government. So far, therefore, as the power and the effect are really

necessary to this their legitimate object, the law is defensible, but not a jot beyond this. If A, the present Zemindar of a Mehal paying 1,000 Rupees to Government, have by any means reduced the rents of his tenants from 2,000 Rupees to 800 Rupees, the Government Revenue is in peril, and the Law ought to be enforced in case of sale. But if from 2,000 Rupees he have reduced the rents to 1,500 Rupees, the Government Revenue may not thereby be emperilled, and the Law, *not* being wanted, ought not to have effect after a sale.

"On the whole the entire absence of bids at a sale, is a pretty fair proof that the Mehal cannot pay its Jumma one year with another. Want of bids proves of course other things besides this; but, generally speaking, it may be safely taken to prove, that the receipts from the Mehal from some cause or other, are likely to be less to a purchaser, than would enable him to meet the Government demand from year to year.

"Whenever, therefore, there are no bids, or no bids equal to the balance, there can be but little reason to doubt that the Government Revenue from that Mehal is in peril; and that in the Mehal in which it occurs, the necessity *has* arisen for the otherwise unjustifiable interference with under-tenures, which at present takes place on all occasions of sale, whether the Revenue is in jeopardy or not.

"The Decennial or Permanent Settlement has in each case a contract between the State and the Zemindar, and his heirs and assigns in perpetuity, and on failure of payment, sale was provided as a means of remedy-

ing the infringement of the contract, and of transferring the contract to new hands. But it appears never to have been expected that Mehals would be unsaleable, or that they would ever be found to produce at sale, a less price than would suffice to pay the whole balance, or so nearly the whole, that the remainder might always be realized by distraint on the defaulter.

"It is clear, however, that in any case in which the putting up of a defaulter's estate to sale for its balance produces *no bids*, or no bids equal to the balance, the contract of the Decennial Settlement by that very circumstance is voided, and the Mehal may be made forthwith to return to the hands of the State, without any violation of the principles of the Decennial Settlement, or rather, in perfect accordance with them.

"The real effect of such a course of Law is at present produced in practice by the clumsy expedient of bidding and buying on the part of Government; but there are some peculiar objections to this plan, and it would be far better that the same thing should be brought about in a simple manner by direct consequence of Law. I would enact, then, that no under-tenures of any description should be in any degree affected by the act of sale, and that the purchaser should succeed to the rights of his predecessor, whatever they might have been or might be, to be settled in case of dispute, like all other rights, viz. by suit in Court."

To this proposal the Indian Government said,* "no

* 10th February, 1840, paras. 24, 25, and 26.

strong objection to such a scheme on the ground of risk to the public Revenue, at present occurs to His Honor in Council: for so long as the Zemindaree is saleable, so long must the Revenue be secure.

"Such a change of Law would be no hardship on the Zemindar. A Zemindar in arrear has a right to claim that his estate be offered for sale, in order that he may obtain its value after payment of what is due from it. But when his estate is found to be unsaleable, it is apparent that he and his ancestors have already divested themselves of the whole of their interest, which consisted only of the Zemindaree *profit*. The re-entry of Government into the management of the collection of the Revenue assessed in the land is then natural; and practically it is nothing more, as it affects the Zemindar, than the present custom of purchasing on account of Government for one rupee. It is clear that as between the Zemindar and Government, an estate is unsaleable, when it will not realize a sum equal to the arrears for which it is put up for sale.

"It is apparent that such a change of Law would be an unqualified benefit conferred upon the holders of under-tenures liable at present to enhancement of rent, or to annulment by an auction purchaser."

The Revenue authorities who had been required to offer their opinions differed. Some were in favour of, others were against Mr. Halliday's scheme.

Other plans were submitted and discussed, when at last after a lengthened revision of seven years, the fifth Draft of the Sudder Board was passed into law in

1841. This Act (XII.) added, for the first time the following exceptional clause in favour of farmers.

"Sect. XXVII.—"*Fifthly.* Holders of farms granted in good faith, at fair rents, and for specified arrears, by a former proprietor for terms not exceeding 20 years under written leases registered in the Collector's office," shall be exempt from ejectment by the sale purchaser.

Lord Auckland observed in his Minute dated 19th July 1841, that "the rule in this clause respecting a security to farming leases under certain circumstances in the event of a sale, is regarded by me with peculiar interest. The indiscriminate destruction of under-tenures by a sale for arrears, has always been considered as one of the chief blemishes of our system, and I earnestly hope that this experiment to give some certainty and security to leases may prove successful. We propose to give stability, on the conditions specified, for twenty years, and not to perpetual leases, because, at least as a first step it may be unwise to run the hazard of error in regard to a perpetual tenure, which we may yet be justified in incurring for a limited term, and because 20 years may fairly be considered a sufficient term to admit of good return for capital employed upon land."

This Act moreover retained the special provision contained in Regulation XI. of 1822, about the discretionary power vested in the Governor General in Council for directing a Zemindaree to be sold for arrears of Revenue, subject to the leases, assignments or other incumbrances with which a proprietor may have burthened his estate.

The next law on the subject was Act I. of 1845, which contained all the above provisions so far as the under-tenures were concerned.

Not long after this law was passed, the question of the insecurity of the under-tenures was again on *tapis*. In 1849 Mr. Mackenzie, a planter of Jessore, represented to the Government, his difficulty in carrying on Date Plantations under the present uncertainty of tenure of land. He said the Date tree does not yield juice fit for the manufacture of sugar, until about seven years after it is planted, but that it will last from thirty to fifty years. Under such circumstance, therefore, he begged, for such alteration in the existing law as to render the leases good, against auction-purchaser of the Zemindaree as long as the lands remained in Date cultivation.

The subject was referred to the Sudder Board for report, and they after learning the sentiments of experienced officers, replied that they were in favor of compliance with Mr. Mackenzie's application.

Having had to record a minute on the subject, one of the most earnest and sincerest of well-wishers to our country, Mr. Ricketts, who was then a Member of the Board, thus put forward his opinion in his Minute dated 10th May, 1850.

"I do not think plantations are protected by the existing Law, so effectually as to give any confidence to farmers. I would protect them completely under all contingencies. I would have no reservations respecting "*bona fide* leases" and "fair rents." The auction-purchaser should buy the rights which the defaulting

Zemindar had reserved for himself, that is, had not already sold, and nothing more. I would have all such leases registered systematically, so that the encumbrances of an estate might be ascertained in a few minutes. The register-book should be accessible to all, without a fee, or on payment of a very moderate fee, just sufficient to prevent parties examining it from mere curiosity. Purchasers would know what there was to buy, and bid accordingly.

"I can see no difficulty, no injustice, no risk, in such a system, but should successive possessors so encumber the resources as to bring about sale and purchase by Government, then a revision of the tenures must be resorted to, otherwise the land Revenue might suffer considerable diminution; but even in that case, I think there would be no great difficulty in guaranteeing all speculators against under-demand.

"I have heard it objected that if leases for improving are to be protected, no one will ever be able to obtain an unencumbered property; that while opening one door for the outlay of capital, we shall be shutting another. Such is not the case. Purchasers will not have opportunity to drain that already drained, nor to plant that already planted, but the field not already occupied will be open to them.

"Instead of protection to improvers being any interference with the right of property as represented by Mr. Trevor, it appears to me that withdrawal of interference is proposed. At present Zemindars are limited in their power to grant leases; I propose to withdraw

the limitation, to allow them to grant leases for any number of years that may appear to them suitable and upon any terms. It is not proposed to compel them to grant leases, but to give liberty to do so if convenient to them. This cannot be styled interference with property. It is true that the purchasers will not, 'as heretofore, acquire estates in exactly the same condition as to encumbrances as they were at the period of the Perpetual Settlement.' The interest exposed to sale will be a limited interest, but there will be no interference with any property acquired under the sale.

"Mr. Trevor remarks—'By the adoption of Mr. Mackenzie's long leases, the advantages of increase of price, in that of sugar for instance would, for a long series of years, go altogether into the pockets of the leaseholders, and the present Zemindar (the auction purchaser) himself not a party to the lease, would be altogether deprived of a portion of those profits to which he is justly entitled as a return for the use of his land.'

"Why should not the advantage of increase of price go to the leaseholder? The speculation, the risk, were his, not the Zemindar's: he would have suffered the loss had prices fallen. How could an Auction purchaser be 'justly entitled' to rents increased in proportion to the increased value of the leaseholder's produce, when all exposed to sale, and all bought by the auction purchaser, was a right to collect a specified rent from such leaseholder?

"No body could be found to defend a law ruling,

that on the demise of a landlord, all leases granted by him should be cancelled, and the estate come to the heir in exactly the same condition, as to encumbrances, as it was when the late proprietor took possession. Under such a law, who would build or in any way improve? Indeed leaseholding would very soon be unknown; the only transactions would be transfer of the fee simple.

"If disadvantageous, and adverse to all confidence and improvement, when dependent on a landlord's life, such an annihilation of all derivative interests must be disadvantageous when dependent on a landlord's honesty and prudence. Life is uncertain, the prudence of landlords not less so.

"Unless it can be shown that annihilation of leases, when a landlord happens to be drowned, or to be confined in the Queen's Bench, would conduce to the welfare of tenants, and the improvement of the country, I conceive that the existing system of annihilation of leases on sale for arrears, can be defended only on the ground of its being necessary to the maintenance of the public Revenue.

"I cannot dismiss this subject without an expression of my opinion of the great advantages which would attend the registry generally of tenures protected under Sect. XXVI. Act 1. of 1845. The Law rules that the purchaser of an estate sold under that Act shall be entitled to enhance the rents of and eject all tenants not protected under the succeeding clauses of that Section; but in the *first* place the titles as defined are open to

question, and *secondly*, there is no record of protected tenures.

"The consequence is, that on a sale taking place, affrays and litigation cannot but ensue. There must always in every case be years of enmity between the new landlord and his tenantry. There being no record of the protected, he assumes that none are protected, while the tenants set up groundless claims to protection, oftentimes supported by the late Zemindar. To me it is quite wonderful that any one should purchase property. Indeed the natives themselves say no one should think of buying who is not prepared to lay out cent. per cent. on the purchase money in litigation. I can imagine no condition more pitiable than that of inhabitants of a Zemindaree transferred by a sale for arrears.

"Though the purchaser may be a man of good character, his agent may be a tyrant. All the tenures of all classes are open to revision; each inhabitant can see before him only the feeing of *peadas* and *Ameens*, *salamee* to the new owner, weary journeying to the sudder stations and at last re-adjustment of rent. —'Re-adjustment of rent!' We can talk of it, and write of it with indifference, but to the tenants of an estate, a sale is as the spring of a wild beast into the fold, the bursting of a shell in the square. It is the disturbance of all they had supposed stable. The consequence must be a recasting of their lot in life, with the odds greatly against them.

"Doubtless a registry of protected tenures would be

a great undertaking, but when we think of the enormous number of tenants in Bengal, and reflect how few there are among them, whose weal does not depend on the prudence, or honesty, or caprice of another, the substitution of confidence for such uncertainty appears cheap at any amount of labor.

"It does not follow that registry of claims, protection in the event of a sale, should occasion any great litigation, for, and this must be borne in mind, it is not protection against the present owner, but protection against the Auction purchaser that will be sought, should the present proprietor admit a claim or be induced, by tender of suitable recompense to recognize such a claim. Record of his admission will be sufficient protection; should he deny the right, the denial will be recorded. The registry-book will tell all parties intending to purchase what there is to buy. It will be objected, that such a scheme would inevitably cause many estates to come into the possession of Government. Each succeeding owner would increase the encumbrances, till at last, all being alienated but the Sudder Jumma, there would be nothing in fact to sell, and therefore nothing to buy, and escheat to Government by the form of a sale would be inevitable. So be it. There would follow re-settlement, and a re-adjustment of the public demand on equitable principles. Those who, at the time of their taking leases under any of the former proprietors, procured a certificate of protection in case of sale and purchase by Government, would not be disturbed; the other tenants, never having been secured

against such contingency, and having always been aware that their title was questionable, and having expended their capital, guided by that knowledge, could have no fair grounds of objections to a re-adjustment of their liabilities. This re-adjustment completed, the Zemindaree tenure should be sold, on such terms as might be considered advantageous to the community, and the government.

"Supposing that in each year, on an average, estates paying a lakh of rupees were to be in this way purchased by the Government, where is the objection, compared with the objection of the whole landed property of the country being in such a condition that no European capitalist will accept land as security for money? Where is the objection compared with the objection of not allowing a good title to any tenant in Bengal, except those particularized in Sect. XXVI. Act I. of 1845? I have said "except," but I doubt whether there has been a single instance of an Auction purchaser recognizing a title under that Section without a lawsuit."

In 1852 the Hon'ble Mr. Beadon, then Secretary, drafted a Regulation for the protection of under-holdings, which being laid before Lord Dalhousie, His Lordship observed, in his Minute dated 21st October 1852, that, "I regard it as of the highest value for giving that security to the property of the ordinary cultivator or of the men of enterprise and capital, without which it is hopeless to expect any substantial improvement in Bengal, or any material increase of its resources. I

therefore cordially agree to the provisions which enact, that the sale of an estate for arrears of public Revenue to a purchaser at auction shall not invalidate the under-tenures on the Estate."

The Draft Regulation, however, was not then passed into law, nor was there any new Law till 1859. From time to time especially in 1856, great discussions took place on the protection of under-tenures from the consequences of sale of Zemindarees for arrears of Revenue. To give any detail of those discussions here will swell this chapter already tediously lengthened. We therefore at once pass over to Act XI. of 1859.

RYOTS' LIABILITY TO EJECTMENT AND CANCELMENT OF THEIR TENURES.

SECTION II.—PROVISION OF ACT XI. OF 1859 IN DEFINING THE AUTHORITY OF AUCTION-PURCHASER OVER UNDER-TENURES—EXEMPTIONAL CLAUSES. REGISTRATIONS, THEIR NATURE AND EFFECT. THEIR CLASSIFICATION. WHAT TENURES CAN BE REGISTERED. WHAT EFFECT THE SALE-LAW HAS OVER RYOTS HAVING THE RIGHT OF OCCUPANCY.

THE latest law on the subject of ejectment of Ryots and cancelment of their leases, is Act XI. of 1859. Important changes were brought about by it, tending to the protection of under-tenures, created either before or after the Permanent Settlement. Sect. XXXVII. of this Act declares, that "the purchaser of an entire estate shall be entitled to avoid and annul all under-tenures

and forthwith to eject all under-tenants" with the following exceptions.

First. Istemraree or Mokureree tenures, which have been held at a fixed rent from the time of the Permanent Settlement.

Secondly. Tenures existing at the time of settlement, which have not been held at a fixed rent. Provided always, that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly. Talookdaree and other similar tenures created since the time of settlement, and held immediately of the proprietors of estates; and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly. Leases of lands wherein dwelling houses, manufactories or other permanent dwellings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk.

It will be observed that after exempting all tenures hitherto exempted by previous laws, this enactment makes an additional exemption in favor of all tenures having heritable and transferable right, provided they are *registered* under the provisions of this Act. So also with regard to Farms; hitherto such of them were exempted from annulment as were for a term not exceeding twenty years. Act XI. removes this limitation, and

secures all farms for limited terms; provided such farms be registered under its provisions.

This registration is mainly what Mr. Ricketts proposed in 1850; and it is particularly important in its consequences, in as much as it is calculated to protect tenures so registered not only from the power of the auction purchasers, with whom wholesale annulment not unfrequently happens to be the rule, but even from that of Government itself, should the Zemindaree ever lapse into its hands for want of bids in the sale for arrears of revenue, or should Government purchase it for any other reason.

There are two modes of such registration, and they are termed *common* and *special*. The former secures the tenures and farms so registered against all auction purchasers except Government, while the latter secures tenures not only against all auction purchasers, but also against Government, should the latter ever purchase the Zemindaree.*

The holders of tenures or farms desirous of registering them, are required to apply by Petition to the Collector, mentioning amongst other particulars the description of registry he desires. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or Zemindar of the estate in which the tenure or farm is situated, and shall also give publicity to the application in the manner described therein, requiring the Zemindar or any party interested, to file within 30 days, any objections he may have

* Section XXXIX. of Act XI. of 1859.

to the registry of the tenure or farm. If within the limited time no objection is made, the Collector shall register the tenure or farm in question.

The procedure for special registry is mainly the same as that of common registry, except that in this the Collector shall have to cause such inquiry to be made, as he may deem necessary for the security of the Government Revenue, and if he is satisfied that the Government Revenue of the parent state is sufficiently secured, so far as it may be affected by the tenure or farm in question, he shall report the case to the Revenue Commissioner, who, if likewise satisfied on that point, shall direct the tenure or farm to be registered according to the application.

These registrations relate only to *mal* tenures, that is, tenures paying Revenue to Government. Lakheraj or rent-free tenures cannot therefore come under the protection of these registrations.*

As regards *mal* tenures again, it is necessary to observe, that *all* descriptions of leases and farms are not permitted to be so registered. The clause permitting registration appears to contain conditions to the effect, that tenures intended for registration shall be held *immediately* of the *proprietor of the estate.* This rule therefore excludes sub-talooks and other sub-under-holdings like Durputnees, Neem Havellas, Durmouroosees, Kutkeenas held *mediately* of

* See Circular Order of the Board of Revenue, No. 46, dated 31st July, 1863.

the Zemindars, from the benefit of registration. Another condition is, that they must be "talookdaree or other similar tenures." It follows therefore that pottahs or leases, which do not convey to the holder any permanent hereditary and transferable rights, that is, rights inherent in talookdaree tenures, cannot be protected by registration either common or special.

Ryottee tenures of inferior descriptions therefore, are not included within the pale of such protection. It may here be asked, how far the holding of a Ryot of modern date, who simply by occupation for twelve years has acquired a right in the land under Section VI. of Act X. 1859, is affected by the sale of a Zemindaree for arrears of revenue? It is provided by the Section exempting the other tenures, that nothing in it shall be construed to entitle an auction purchaser to eject any Ryot having a right of occupancy at a rate assessible according to fixed rules under the laws in force.

It might strike one that until a Ryot has acquired the right of occupancy, the sale law must have an injurious effect upon his right, in as much as it not only subjects him to ejectment on the sale of the Zemindaree, but also prevents his acquiring that right of occupancy which he must, by operation of law, have done, had not the Zemindaree been sold, and he ejected from the lands occupied. But on closer inquiry, however, this injury will not appear so material, for the under-holder so ejected can, as implied by the tenor of

Sect. XIII. Act X. of 1859, have his tenure renewed from the sale purchaser. This option of renewing pottahs existed from the very commencement of the system of sale of Zemindarees for arrears of Government Revenue. If it is still incumbent upon the sale purchaser to allow the Ryot to renew his pottah, his chance of acquiring the right of occupancy is, perhaps, still left intact, unless the fact of ejectment, though for a day, be assumed to extinguish the accruing right in the holding of the previous years.

CHAPTER VII.

PERSONAL LIABILITY OF THE RYOT.

ORIGINALLY RYOTS WERE NOT PERSONALLY LIABLE. THEIR LIABILITY DATES FROM THE MOHAMMEDAN RULE. REG. XVII. OF 1793 FREED THE RYOTS FROM CORPORAL PUNISHMENT. PROVISIONS OF REG. XXXV. 1795, AND OF REG. VII. OF 1799. THE POWER OF COMPELLING THE ATTENDANCE OF RYOTS IS WITHDRAWN BY ACT X. OF 1859. PUNISHMENT UNDER ACT X. FOR EXTORTING RENT BY DURESS. PUNISHMENT FOR THE SAME UNDER THE PENAL CODE. PROCEDURE.

THE personal liability of the Ryots to the Zemindar for his rent is indeed of a modern date. In ancient days the Ryots paid no rent; whatever he paid was only land tax or Revenue, and that of course direct to Government; and it does not appear that there was any law to make him personally liable for his default of payment of that revenue. It was not until the reign of the Moslem Emperors, that we find the Ryots in Zemindaree jails for arrears of rent, as the Zemindars themselves often had occasion to pass their days in Government prisons for arrears of revenue. This was especially so during the anarchy that prevailed towards the close of the Mohammedan Rule when, from the Governing Nabob down to the Zemindar, all tried to assume uncontrolled authority in their respective juris-

dictions, or at any rate to show themselves more or less invested with it. They often styled themselves Raja, Moha Raja, or Moha Rajadheraj, that is to say, King, Great King, or the Great King of Kings. Indeed, to the Ryot every man of authority was in effect an absolute king, and unmistakably so, if such a person happened to be his actual Zemindar.

Such Zemindar could, if he liked, easily deprive the Ryot of his property, or hurl him into prison; nay he could torture him to death, if it so pleased his whim, and no law or Government functionary could or would protect the sufferer.

In this helpless state of the Ryot, the British Power took the reins of Government, and we are all well aware how far he is, at this period, safe in the moffusil from the authority of his Zemindar. Nevertheless it will be useful to trace here the different laws that have been enacted since 1793, as affecting the Ryot's personal liberty in connection with his Zemindar.

The first law on the subject, is Regulation XVII. of 1793. It is but a re-enactment of certain Regulations passed on the 20th of July, 1792.

The Preamble of this Regulation of 1793 affirms, that "from the Regulations not defining the nature and extent of the coercion, which landholders and farmers of land might legally exercise over their underfarmers, Ryots, and dependent Talookdars, to enforce payment of arrears of rent or revenue, many landholders and farmers, availing themselves of the sanction of former usage, had recourse to the most oppressive

means for realizing arrears, and frequently employed the same severities for the purposes of extortion." It therefore declared (Sect. XXVIII.), that "landholders and farmers of land are prohibited from inflicting corporal punishment on any Ryot, in order to enforce payment of arrears of rent or revenue." In such cases suit at law or distraint of property was meant to be the legal course. But the Legislature of 1795 found the distraint of property as a means for recovery of arrears of rent to be, where the amount was large, insufficient. In order, therefore, to enable the proprietors of land to recover more speedily their dues in such cases, a summary process was enacted by Regulation XXXV. of that year, whereby under-holders were made liable to confinement, for arrears of rent exceeding five hundred *Sicca* Rupees after a notice of three days to the defaulter, and after a summary inquiry respecting the arrears before the Judge of the Dewanny Adawlut.

Even this was deemed by the Legislature of 1799 as too great a concession in favor of the Ryots. Regulation VII. of that year remarked, that the limitation of five hundred Rupees, and the opportunity left to defaulters to abscond, had been found "in a great degree to defeat the ends proposed, and the fraudulent and evasive conduct of under tenants who were not the immediate cultivators of the land, and who had little personal property that could be distrained, rendered it necessary to give further aid to the landholders and farmers, for the recovery of arrears of rent due from

under-tenants of this description." We have noticed in another place,* the opinion which the Government of this period held regarding Bengal Ryots, and we do not wonder, that such a biased Government should have passed a Regulation enacting, that any Zemindar to whom an arrear of rent was due, which could be realised by distraining the under-holder's personal property, might cause his immediate arrest without even any express demand of rent, if he had reason to believe that the defaulter was prepared to abscond. And this arrest could be for any sum however small.

The mode prescribed for such arrests was again the worst provision in that Regulation. The landholder had nothing else to do, but to apply to the Judge of the Dewanny Adawlut, or as was generally the case, to the ill-paid native Commissioner stationed in the Moffusil, praying that the obnoxious Ryot might be taken into custody in case he still failed to pay. The Law empowered the native Commissioner to arrest the person whom the landholder should point out, and to have such person escorted before the Judge at the Sudder Station, without any inquiry as to whether the party arrested was actually a defaulter or not. It was indeed a very successful engine in the hands of a landholder, to bring an innocent party into scrape to satisfy his private pique. This notorious law of Wellesley's Government was known as Haftum amongst the natives, and its memory is even now regarded by the people with horror.

* Supra 43.

Lest it should have been understood from the above provision for effecting arrest through the native Commissioner or Judge, that the Zemindar had no power of his own over the person of his Ryot unless through the interference of Government officers, the Regulation under notice placed that point beyond the possibility of doubt by declaring, "that no part of the existing Regulations was meant to deprive the Zemindars and other landholders of the power of summoning, and if necessary of compelling the attendance of their tenants, for the adjustment of their rents, or for any other just purpose."

The spirit of this cruel legislation as far as it regarded the personal liability of Ryots, was not modified even by Regulation XIX. of 1817 of Lord Moira's Government, which, as we have seen, really sympathized with the Ryot in all other respects.

Such however had continued to be the law till 1859, when the most oppressive portion of the dreaded power was withdrawn from the Zemindar by Section XI. of Act X. of that year. It declares, that "the power heretofore vested in Zemindars and other landholders, of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose, is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than are authorized by the provisions of this Act."

It will be observed that the power of compulsion alone is withdrawn from the Zemindar, but that does

not necessarily imply that the Zemindar is prohibited to summon his Ryot.*

Section XII. provides that, "if payment of rent, whether the same be legally due or not, is extorted from any under-tenant or Ryot by illegal confinement or other duress, such under-tenant or Ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred Rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section, shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law."

The Penal Code struck the last and most fatal blow to this power of the Zemindars, which was a disgrace to the British rule. "Whoever," says the 348th Section, "wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, to restore or to cause the restoration of any property or valuable security, or *to satisfy any claim or demand,* or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

* See Mr. Grote's opinion in the Board's Report, No. 291, dated 3rd May, 1861.

The Zemindars raised objections against the provision of Sect. XII. Act X., and even some Government officials of experience and intelligence felt diffident to subscribe to the hopes of a favorable result from this innovation. Some of them doubted, whether "so sudden and radical a change in the condition of the Ryots of Bengal, was a wise or politic one": others thought that it would lead to a depreciation in the value of the landed property; but the Board observed,* from the experience of two years' operation of this law, that the objections urged were "speculative," and no instance came to their notice, which bore out the apprehensions as to the evil effects, felt from the change in question.

Under the present law therefore, the Ryot is no longer liable in person to his Zemindar, though in certain cases he is still so to the Collector, for withholding just rents from his Zemindar. In this respect, Act X. of 1859 is a great improvement on the preceding law on the subject. That law (Reg. VII. of 1799) armed the Zemindar, as we have seen, with a very oppressive power of causing arrest of any person however respectable, or however unconnected with any land, and this without even the slightest inquiry as to his being a defaulter or not. Now under Act X. the Zemindar has no such power in his hands. If he is desirous of having a warrant of arrest issued against his Ryot, he must, first of all, satisfy the Collector, not

* In their Letter, No. 291, dated 3rd May, 1861.

only on oath and affirmation, but also by documentary evidence, that the claim is "well founded and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim." If in spite of this precaution, it afterwards appear to the Collector, "that the arrest of the defendant was applied for without reasonable cause," the Collector may in his decree award to the defendant such damages not exceeding one hundred Rupees, as he may deem a reasonable compensation for any injury or loss, which the defendant may have sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

But if the application for arrest turns out to be reasonable, and a decree is passed against the defendant, "the Collector may order that he be detained in or committed to the Civil Jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree."

We must not omit to notice here, that when the defendant is brought under the warrant of arrest which, as we have seen, is meant to be issued on proper consideration and inquiry, the Collector is to send him to the Civil Jail: but not so, if such person can deposit in Court the full amount mentioned in the warrant, or make such arrangements for payment as would be satisfactory to the judgment creditor, or if such person can satisfy the Collector that he has no means of paying. The last provision is indeed a great boon to some of the poor Ryots.

Section XCIII. moreover provides, "that the time for which a debtor may be confined in execution of a decree under this Act, shall not exceed three calendar months, when the amount decreed exclusive of costs does not exceed fifty rupees; or six calendar months, when such amount does not exceed five hundred rupees; or two years in any other case." But the prisoner shall be discharged, if the judgment creditor omits to advance his diet money.

The next Section provides, that "any person once discharged from Jail, shall not be imprisoned a second time under the same judgment."

In consideration of the hardship already undergone by these discharged prisoners, Section XCIV. absolves them from further liability, if the amounts decreed against them do not exceed one hundred rupees; but if the decree exceeds that amount, the discharge will not extinguish the liability of the discharged person, or exempt any property belonging to such person from attachment in execution of the decree.

CHAPTER VIII.

LIABILITY OF PROPERTY OR DISTRAINT.

DISTRAINT IS A PARTICULAR MODE OF RECOVERING RENT. IN WHAT CASES IT IS APPLICABLE. IT IS NOT UNFREQUENTLY OPPRESSIVE. HOW THE LEGISLATURE GUARDS AGAINST OPPRESSION. PROVISIONS OF OLD LAWS WITH REGARD TO PROPERTIES LIABLE. PROVISIONS OF ACT X. OF 1859 ON THE SAME POINT. WHO ARE EMPOWERED TO DISTRAIN. BRIEF PROCEDURE OF DISTRAINT AND SALE.

DISTRAINT is the seizure of goods by the Zemindar for the ultimate purpose of sale, in order to realize the rent left unpaid by the Ryot. The general mode of recovering arrears of rent is by suit at law before the Collector; but distraint is the particular mode applicable only where the land on account of which the rent is due, yields some crop or produce. It is therefore not applicable, where the land is held to build houses on, or for like purposes. Nor is it applicable, even if the land does yield some produce, where the cultivator holding the land has given security for the payment of his rent.*

Distraint is to be understood as a particular mode, and not the only mode of recovering arrear of rent, where the land on account of which the arrear is due

* Sect. CXII. of Act X. 1859.

produces any crop. The Law says that the person entitled to receive rent, instead of bringing suit as provided, *may* recover the same by distraint and sale of the produce of the land.* It does not therefore seem, that in such cases a suit at law is denied to the Zemindar. Even were it so denied, the Zemindar would not be the less glad for it. Nothing could be more conducive to his convenience, than the power of distraint and sale of the Ryot's property. Here he himself would in point of fact, be the adjudicator of his own demand; he would name his due whether right or wrong, attach of his own authority the properties of the Ryot, and threaten to have them sold on the demand remaining unpaid.

It not unfrequently happens that the power of distraint is abused. If the Zemindar were left to distrain and sell at random, any property to which he might take fancy, so much latitude of choice might reduce the Ryot to the most wretched condition conceivable. It has therefore been the endeavour of the Legislature from the beginning to guard against all oppressions, by clearly defining the procedure of distraint.

In so doing, the principal question has been, what property of the Ryot is liable to distraint. The first law† on this subject limited the option of the Zemindar, only to the personal property of the Ryot, with the exception of the implements of husbandry, the cattle actually trained to the plough, and the seed grain; and this under the

* Sect. CXII. of Act X. 1859.

† Reg. XVIII. Sect. II. of 1793.

condition, that the defaulter had other cattle, grain, or property sufficient for the discharge of the arrear. But Reg. V. of 1812 removed this condition, and made the implements, the plough, cattle, and the seed grains absolutely exempt from distraint, "although the tenant from whom such arrears may be demanded, had not possessed other property sufficient to make good the arrear."

This continued to be the law till 1859, when it was thought that too much power had been left to the Zemindar over the property of the Ryot. Act X. of that year has, therefore, confined the authority of the Zemindar only to "standing crops and other products of the earth," and this again as regards those lands in respect of which the arrear is due. The Act under notice laid down the principle, that "the produce of the land is held to be hypothecated for the rent."* The produce

* Under this principle it would seem that the law of distraint may also apply to Bagat holdings, and farms or leases for plantations, for they yield what may be called the "produce of the land:" but the Section which lays down this principle, makes mention only of the "*cultivator of lands*," for the recovery of whose rent the practice of distraint and sale has been permitted. Whether holders of Bagat Pottahs and planters are meant to be included in the term "cultivators of the land," yet remains to be known. From a careful perusal, however, of the provisions, one might be led to believe that mangoes, cocoanuts and other fruits, growing on a land held exclusively for the cultivation of fruits, are also meant to be distrained. The mention of *products* in addition to *crops*, shows that paddy and similar things are not exclusively meant.

of the land, therefore, is liable to be distrained and sold, and nothing else; but even to this liability there is a limit, for, after the produce has been stored by the cultivator, the Zemindar cannot distrain and sell it. It is only liable to be distrained whilst standing on the field unreaped, or simply reaped, or gathered and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead.*

Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places, as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and then store the same either in such granaries or in some other convenient places in the neighbourhood. In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. Crops or products which from their nature do not admit of being stored, may be sold before they are cut or gathered under the rule provided; but in such a case the distraint shall be made at least twenty days before the time, when the crops or products or any part of the same become fit for cutting or gathering.†

The persons who can distrain the properties of the Ryot, are "the Zemindar, lakherajdar, farmer, dependent Talookdar, under-farmer, or other person entitled

* Sect. CXV. of Act X. of 1859. † Sect. CXVIII. of Act X. of 1859.

to receive rent immediately from the cultivator," from whom the arrear is due.* The person must be entitled to receive rent *immediately* and not *mediately* from the cultivator, so that the Zemindar will not be entitled to distrain where there is the Putneedar under him to receive rent, nor will the Putneedar be so entitled where there is a Dur-putneedar under the Putneedar, and so on.

Besides the persons above enumerated, managers under the Court of Wards, Surburakars and Tuhseeldars of estates held under khas management, may also exercise the power of distraint; so also can the Naibs, Gomashtahs, and other agents employed in the collection of rent, if expressly authorized by power of attorney; but if any illegal act is committed by any such Naib, Gomashtah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.†

When any of the persons above enumerated shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.‡

With regard to this power of distraint, Act X. of 1859 further provides, that no sharer in a joint estate

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* Sect. CXII. of Act X. of 1859. † Sect. CXIV. of 1859.
‡ Sect. CXX. of Act X. of 1859.

in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint, otherwise than through a manager authorized to collect the rents of the whole estate, on behalf of all the sharers in the same.*

Distraint shall not be made for any arrear, which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent, payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.†

Before or at the time when distraint is made, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.‡

Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as provided, but the property distrained must be of value proportionate to the amount of the arrear with costs of distress§. The distrainer moreover shall prepare a list or description of the property distrained, and deliver a copy of the same to the owner, or if he be absent, affix it at his usual place of residence.‖

If the distrainer shall be opposed or apprehend resistance, he may apply to the Collector to obtain the

* Proviso of Sect. CXII. of Act X. of 1859.
† Sect. CXIII. of Act X. of 1859.
‡ Sect. CXVI. of Act X. of 1859.
§ Sect. CXVII. of Act X. of 1859.
‖ Sect. CXVII. of Act X. of 1859.

assistance of a public officer, and the Collector may, if he think necessary, depute an officer to support the distrainer in making the distraint.*

This is the Procedure in distraint. A few remarks on the procedure of the sale of distrained property will not be out of place.

After the property has been distrained in the manner above described, the distrainer shall apply, for the sale of the goods, to the Officer authorized to hold such sales. But such application must be made in writing within five days from the time of storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, the application must be within five days from the time of making the distress.†

Immediately on receipt of the application, this officer shall serve a notice on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. The Officer moreover shall issue a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application.‡ If the demand is not contested before the Collector within the time fixed in the notice, sale of the property shall take place on the day fixed in the proclamation.

* Sect. CXIX. of Act X. of 1859.

† Sect. CXXII.

‡ Sect. CXXIV.

CHAPTER IX.

RIGHT OF ALIENATION BY SALE.

USAGE DETERMINES WHAT TENURES ARE ALIENABLE AND WHAT NOT. RIGHT OF OCCUPANCY RYOTS TO SELL. REGISTRATION IN THE ZEMINDAREE SHERISTAH. CONSEQUENCES NOT DEFINED. CERTAIN TRANSFERS TO BE MADE WITH THE ZEMINDAR'S CONSENT.

THE Legislature of this country has never defined what Ryottee tenures are transferable by sale and what not. It has left to usage alone to decide that question; and usage permits alienations by Ryots of all tenures existing from the time of the Permanent Settlement, of all Bagat, Bastoo and other similar permanent tenures, though created since the settlement, and in fact, of almost all tenures that are exempted from annulment by the sale Law.

Usage has been uniform with regard to these permanent heritable tenures. But with regard to holdings with right of occupancy, it is otherwise. Sect. XV. Reg. VII. of 1799, mentioned some of their holders, as "without any right of property or transferable possession." Accordingly the late Sudder Court held in Prosono Coomar Tagore *versus* Ram Mohun Dass* that these Ryots have no right to sell.

* 11th January, 1855.

But it might strike one that the right of occupancy is a positive right, and therefore must have some value. Admitting that this right is no more than the right to preference, it is still a right and a very tangible right too, which most other Ryots have not, and would like to gain for an equivalent.

The right of occupancy as conferred by Act X. of 1859, is not merely a right to hold in preference to others, but also a right to hold at a fair and equitable rate, which is an exclusive right conferred on the occupancy Ryots only, and not extended to the tenants at will, as must appear on a comparison between Sects. V. and VIII.* of Act X. of 1859.

This right of occupancy again is not only a right to hold at a fair and equitable rate in addition to the right to preference, but also a right to hold independently of the Zemindar's arbitrary authority of ejectment. Over and above this it is a permanent and hereditary right. Are these advantages then worth nothing? Would the right of occupancy convey nothing,—nothing to bring in an equivalent?

The Ryots themselves are fully aware of the importance of this right and covet it; but its acquisition

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* V. Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable rates.

VIII. Ryots not having right of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.

must be either by descent or by self-occupancy, and not by the other general mode of purchase, unless the Zemindar gives his consent to the bargain. What is the policy of this restraint is not quite apparent; one may well understand its necessity under the old feudal system of Europe; such transfer of a feud without the consent of the lord was not permitted, lest thereby a feeble or suspicious tenant might have been substituted and imposed upon him to perform the feudal services, instead of one on whose abilities and fidelity he could depend.*

But where is the necessity of such consent of the Zemindar under the present Revenue system of Bengal? He expects no feudal services from his Ryot, and therefore does not concern himself about the strength or feebleness of the tenant, nor has he any ground to enquire about the Ryot's fidelity. His concern is his rent; that secured, he ought to be quite indifferent of what color or creed his Ryot may be.

But when the occupancy Ryot sells his right to another, the Zemindar's rent is not at all in danger. His option to sue for arrear of rent, his power of distraint, his right of enhancement are all left intact. Why then still this restraint? If the transfer to the son by the death of the father does not injure the right or rent, why should that right or rent be presumed to be injured by the transfer to another for an equivalent?

Reason does not warrant this restraint on the power of

* Step. Black. Vol. I. Book II. Chapter XV.

the vendor, nor does usage countenance it; for, instances of such transfers are not rare in the interior. On the contrary, amongst Ryots holding from the Decennial Settlement, usage never permits one of them to alienate by sale on the plea of his holding at fixed rent, and prevents another from so doing, simply because, under the recent law of 1859, he is merely a Ryot with the right of occupancy. This right of occupancy is in fact altogether a new right. Among its holders are now included Ryots, whose tenures date from the Mohammedan Rule, and whose power of transfer therefore had never been questioned, either by usage or law, and whose tenures may have, in point of fact, been a subject of bargain and sale, perhaps for some dozens of times. Now to deprive such Ryots of the right of alienation, on the ground of their having been recently classed by Act X. of 1859 as Ryots having right of occupancy, is ridiculous. Act X. never says that such Ryots have no right of alienation without the consent of the Zemindar. No other law said so, except Regulation VII. of 1799, but that Regulation was not declaratory on the point; and even if it were, it cannot now be binding, as that Section of the Regulation which made an incidental mention of the subject has been repealed. The Decision of the late Sudder Court too, based upon that repealed law, can no longer be binding. The occupancy Ryot of old is different from the occupancy Ryot of the present day; the rule binding on one cannot be applicable to the other.

Act X., which confers upon the Ryots this right of

occupancy, defines their rate of rent, and declares how far they are independent of the Zemindar's arbitrary authority of ejectment and how their right is to accrue, should have explained how far they are competent to alienate by sale. But Act X. is silent on the subject.

All that Act X. of 1859 provides about transfers in general, is their registration in the Zemindaree Sheristeh. It says, "all dependent Talookdars and other persons possessing a permanent transferable interest in land, intermediate between the Zemindar and the cultivator, are required to register, in the Sheristeh of the Zemindar or superior tenant to whom the rents of their talooks or tenures are payable, all transfers of such talooks or tenures or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every Zemindar or superior tenant is required to admit to registry and otherwise give effect to any such transfer when made in good faith, and all such successions and divisions. If any Zemindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferree or successor may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the Zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession."*

* Sect. XXVII. of Act X. of 1859.

From the above it appears, that Ryots possessing a permanent *transferable* interest in land intermediate between the Zemindar and the cultivator, may transfer by sale, gift or otherwise. But what Ryots have transferable interest is not declared by this or any preceding law. Usage, as we have seen, cannot be appealed to in cases of holdings newly created.

The same law, moreover, enjoins registry of transfer in the Zemindar's Sheristeh, but what the effect will be of non-compliance with this provision, is not declared therein. If the Zemindar refuse to admit to registry, the Ryot is directed to apply to the Collector, who shall inquire and insist on the admission of registry; but if there is no sanction of law entailing any damage upon the Ryot, why should he at all undergo the trouble of applying to the Collector? If he is sure of no injury to himself, he will never report the transfer to the Zemindar.

If registry is held absolutely necessary on the ground of keeping the Zemindar or superior tenant informed of the person from whom he is to demand rent, the natural consequence of omission to report the transfer would be, that the vendor shall continue liable for the rent; and if this be in fact the consequence, the law requiring the registry of transfer in the Zemindar's Sheristeh should have pointed it out.

But we see in Shib Narain Bhuttacharjea *vs.* Juggut Moyee Dossee, that the landholder in the absence of such registry, could not hold responsible the old Mukurureedar who had sold his land to another; when sued

for arrears of rent the purchaser appeared to answer the case instead of the Mokurureedar: to this the Landholder objected on the ground, that the sale was not registered in his Sheristeh, and therefore the purchaser could not successfully take upon himself the defence of the case. But this objection was of no weight in the opinion of the Court.*

In the transfer of a tenure, in itself transferable, consent of the Zemindar is not required under Act X. of 1859; but in the division of rent occasioned by such transfers, it is necessary.†

* S. D. A. 5th September, 1861.

† Sect. XXVII. Act X. 1859.

CHAPTER X.

MISCELLANEOUS.

Measurement of Land.—"Every proprietor of an estate or tenure or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the land comprised in such state or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands." If any under-tenant opposes the measurement, or "refuses to attend and point out such land," the person, who has the right of measurement, may make application to the Collector, who after due inquiry under Act X. of 1859, "shall pass a decision either allowing or disallowing the measurement, and if the case so requires, enjoining or excusing the attendance of any such under-tenant or Ryot. If any under-tenant or Ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence."*

If the person entitled to receive rent, is unable to measure by reason of his being unable to ascertain the

* Sect. IX. Act. VI. 1862.

persons liable to pay rent in respect of the lands, such proprietor "may petition the Collector in respect of the lands which he cannot measure as aforesaid," and the Collector "shall proceed to measure the land, and to ascertain and record the names of the persons in occupation of the same, or on the special application of the proprietor or other persons aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable." If after due inquiry the Collector shall be unable to measure the land, or to ascertain or record the names of the persons in occupation of the same, he may declare the same to have lapsed to the party on whose petition he has made inquiry. If any person within fifteen days after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have elapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms, as he may think proper, alter or rescind his declaration according to the justice of the case.*

All measurements made under this Act shall be made by the standard pole of measurement of the Pergunnah, in which the land is situated.†

* Sect. X. Act VI. 1862. † Sect. XI. of Act VI. 1862.

Relinquishment of Land.—"Any Ryot, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent, in or before the month of Cheit of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land or his agent refuse to receive any such notice, and to sign a receipt for the same, the Ryot may make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section XIII."*

* Sect. XIX. of Act X. 1859.

APPENDIX.

Extracts from review of Judgment held on the 17th March 1864, in Hills *vs.* Ishur Ghose.*

JUDGMENT BY SIR B. PEACOCK, C. J.

THE defendant has failed to prove that the term for which he was to hold was ever fixed or defined or that any stipulation was made as to the rate of rent at which he was to hold. He must be considered, therefore, to have entered and held as a tenant for one year only, and to have continued to hold on with the consent of the land-owner from year to year ; or, according to the language more generally used in this country, as a tenant at will, and but for Act X. of 1859, he would have been liable to have his tenancy determined by the land-owner, and to have been turned out of possession at the end of any agricultural year.

It is unnecessary to determine whether, according to the law of this country, any notice to quit would have been necessary or not.

It was admitted that the defendant was entitled to a right of occupancy so long as he paid the rent payable for the land, and no evidence was given to show that he was entitled to any ancient right, or that he had occupied more than thirty years. The rent, therefore, not being fixed, was, by virtue of Section 5 of Act X. of 1859, to be at a fair and equitable rate.

By Section 17 of the same Act X. of 1859, his rent could not be enhanced except upon one of the grounds mentioned therein, and as it was not shown by the petitioner, the land-owner, that

* From the "Englishman" of the 31st March 1864.

the defendant held or cultivated under a written engagement, he would not have been liable to have his rent enhanced for the year 1268, unless a notice had been served upon him on or before the month of *Chyte* 1267, specifying the rent to which he would be subject for the ensuing year, and the ground upon which the enhancement was claimed. As before observed, it was admitted that a ground for enhancement under Section 17 existed, *viz.*, that the value of the produce had increased otherwise than by the agency, or at the expense, of the ryot: and it was further admitted that the notice required by Section 13 had been served before the expiration of the month of *Chyte* in the year preceding that for which the enhancement was claimed. Upon being served with that notice, the defendant had a right to quit if he was not willing to hold at the enhanced rent demanded by the notice (see Act X. of 1859, Sec. 19) and if he had done so, he would have been in no worse position than he would have been if he had not had a right of occupancy, and the plaintiff had determined his tenancy at the end of 1267, because they could not come to terms as to the rent to be paid. It was argued that the holding for twelve years would have given a right of occupancy even if Act X. of 1859 had not been passed; and a case reported at page 778 of the *Sudder Decisions* for 1853 was cited as an authority in support of that position. I have examined that case, and after full consideration, I cannot admit it as a binding authority. No reasons were given by the judges who decided it, and in argument the right was based upon the the Statute of Limitation. It is impossible to conceive how the Statute of Limitation could have created such a right. This is not my opinion only. In the case of Degumber Mitter and Ramsoonder Mitter (*Sudder Decisions*, 1856 p. 617) it was held in accordance with numerous decisions of the Sudder Court, that the law of limitation did not prevent enhancement, that the claim to assess was a continually recurring cause of action, and that the possession of a tenant paying rent was not adverse, but only permissive. A similar decision was come to in

the case of Mussummat Lata *vs.* Nessa Khatoon and Ramgopaul Sein, same vol. page 665.

In the case of Maharajah Newul Kishore Sing *vs.* Auchumbit Roy, *Sudder Decisions* for 1846, page 358, the plaintiff sued to recover possession of lands held by the defendants in excess of the quantity to which they were entitled under their pottah. But the defendants had held the land sought to be recovered for eighteen years after the plaintiff's purchase at an auction sale, and the court held that the plaintiff was barred by the Statute of Limitation. The case of Mirtunjoy Purree and others *vs.* Omeshchunder Paul Chowdree, *Sudder Decisions* for 1849, page 411, was a similar one. The defendants had held undisturbed possession of the lands sought to be recovered in excess of the quantity of land which they held under a pottah at a fixed rent, and it was held that the Statute of Limitation applied.

It must be remarked however, that in these cases, if the land sought to be recovered was included in the defendant's lease, the lease would prevent the plaintiff from turning the defendant out of possession so long as it continued to exist. If the land was not included in the lease, and the defendant had not paid rent for it, the defendant held it not under the lease, but adversely, and the plaintiff was barred by the Statute of Limitation in consequence of the adverse holding for more than twelve years. Those cases are therefore no authority for the position that a tenant who holds land as a tenant under a lease, or as a tenant for an uncertain term, and pays rent for it for upwards of twelve years, gains a right by the Statute of Limitation to continue to hold the land after the expiration of the lease or the determination of the tenancy. In such a case, he holds during the tenancy under a contract express or implied, and does not gain a title by an adverse holding. In the latter of the two cases above referred to, one of the judges held that the Statute of Limitation was not a bar, because the defendant had been guilty of fraud, but the two who were in the majority held that no fraud had been set up or specifically specified.

In the case of Ram Chunder Paul Chowdree *vs.* Punchoo Mundul, *Sudder Decisions* 1856, page 953, the law of limitation was held not to apply, inasmuch as the defendant had not been in possession twelve years: but it was held that the defendant was proved by his pottah to be a *kudmee* ryot having a fixed right of occupancy. That case turned not upon the Statute of Limitation, but upon the construction of the particular lease which contained an express stipulation of renewal, for the ryot was expressly assured "that on the expiration of the lease the settlement for the same land would be renewed at the same rent." p. 958.

Some remarks were made by two of the judges as to the defendant's right of hereditary occupancy. "That is, (the judges say, as we apprehend,) the right to occupy the land as *khoodkasht* ryots, or resident and hereditary cultivators, having a prescriptive right of occupancy subject to the payment of such rents as may be legally imposed;" what they said as to a *khoodkasht* ryot was merely an *obiter dictum* and not binding as an authority. It would surprise landowners in England if they were told that tenants who held under leases, for ninety-nine years at a low rent, or had held for twenty years as tenants from year to year, had acquired rights of occupancy by the Statute of Limitation, and that at the expiration of the leases, or upon the determination of the tenancies, they were not bound to quit, but were entitled to rights of occupancy, to hold on at a lower rent than the land-owners could obtain from new tenants.

Mr. Montriou in his argument contended that a ryot who acquires a right of occupancy by holding for twelve years under Section 6, Act X. of 1859, is entitled to the same rights as a ryot who has occupied for 30 years. If so, a ryot who has held for thirty years (and the statement put forward on behalf of his client was that he had held for thirty years) cannot, by acquiring a right of occupancy by such holding, be entitled to any greater privilege as regards the rent—which is to be considered fair and equitable—than a ryot who has gained a right of occupancy by

a holding for only twelve years. Indeed there is no assignable reason why a tenant who gains a right of occupancy by holding for more than twelve years, ought to have a better or more valuable right than one who has gained a right of occupancy by having occupied only twelve years' length of holding, coupled with other evidence such as descent from ancestor to him, may be presumptive evidence of an ancient hereditary tenancy which commenced before the Permanent Settlement; but unless the evidence is sufficient to prove an ancient right, there is no more virtue in a holding for thirty years, than there is in a holding for twelve.

But for Act X. of 1859, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the date of the Permanent Settlement) would, in my opinion, have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267, if he and his landlord could not agree as to the rent to be paid for the future. But it being admitted that he had a right of occupancy, he was entitled to hold at a fair and equitable rate.

Mr. Montriou contends, that what is fair and equitable depends upon the status of the ryot, and not upon the value of the produce and costs of production; that ryot having a right of occupancy has a proprietory right in the soil, and that what might be fair and equitable as regards a ryot having capital, would not be fair and equitable as regards a ryot who is forced to borrow the necessary capital from a mahajun.

I cannot put such a construction upon the words "fair and equitable." If such were the intention, I should have expected to find a fourth ground of enhancement in Section 17, viz.;—if a ryot who was forced to borrow the capital necessary for cultivating the land at the time when the tenancy was created and the rent fixed, shall be proved to have acquired sufficient capital of his own to enable him to cultivate the land without borrowing from a mahajun.

These and all such enquiries as to the circumstances of the

ryot would involve endless disputes and litigation, to say nothing of perjury, and the taking of the evidence in a suit to enhance the rent for a few biggahs of land instead of occupying two months as in the present case, might possibly be extended to four. I cannot suppose that any such injustice to the land-owners could have been intended.

At the time of the Permanent Settlement, the Governor General in Council by Section 8 of Regulation 2, of 1793, reserved the right, whenever he might deem it proper, to enact such Regulations as he might think necessary for the protection and welfare of the ryots and other cultivators of the soil; or, to use the words of the Despatch of the Court of Directors, "such Regulations as might be necessary to prevent the ryots from being improperly disturbed in their possession, omit or loaded with unwarrantable exactions." (*Harington's Analysis of the Regulations*, Vol. 2, p. 189.) * * * * * * * * Whether Section 6 Act X. of 1859 (which is worded much in the same manner as Section 49 Regulation 8 of 1793) was intended to apply to holdings which existed at the time of the passing of the Act, and to such holdings only, or whether it was intended to apply to future, as well as to past, holdings or to future holdings only, it is clear that it created a new right which was never before created by such a holding.

To hold that the Legislature intended to confer rights of occupancy which did not previously exist, at rents lower than such as could be reasonably obtained from new ryots, would be giving a construction to the Act which would render it an unjust interference with the vested rights of the land-owners in the permanently settled districts, would considerably reduce the value of their property, and would defeat the expectations which were held out to them that they would enjoy exclusively the fruits of their own good management and industry.

It can scarcely be imagined that the Legislature, could have intended to confer by a twelve years' holding a right of occupancy against a Zemindar at a lower rent than he could obtain from a

new tenant, when they would not confer such a right against a purchaser claiming through the Government by reason of a purchase at a sale for arrears of revenue; and yet we find that a purchaser at a sale for arrears may annul a tenure created by a holding for twelve years, and may eject all subordinates except such as existed at the time of the Permanent Settlement; see Act 11. of 1859 Sec. 37.* I cannot think that it was the intention of the Legislature by Section 6 of Act X. of 1859 to give to a ryot, who obtained possession only twelve years ago when he had no right to the land, and when the Zemindar was not even bound to accept him as a ryot or to admit him into possession, any proprietory rights which would entitle him to participate beyond the period of his tenancy in any increase in the value of the produce of the land not caused by his own agency or at his own expense.

Surely it could not have been necessary in order to protect the ryots from unwarrantable exactions, to enact that a ryot who had no right on the land 13 years ago should, by reason of his having occupied it for 12 years, become entitled to hold it at a less rent than a new ryot would give for it.

I am clearly of opinion, that after the Permanent Settlement and before Act X. of 1859, a right of occupancy was not acquired by a ryot merely by holding or cultivating land for a period of twelve years. If when the right was created by the Act it had been left to the arbitrary discretion of the Zemindar to fix his own rent, he might have fixed it at any amount he pleased, and might thus have frustrated the intention of the legislature. But it was declared by Section 5, that ryots having

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* This is an error. The proviso to the section quoted runs thus: "Provided always that nothing contained in this Section shall be construed to entitle any such purchaser as aforesaid to *eject any Ryot having a right* of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force—or to *enhance the rent of any such Ryot*, &c."

rights of occupancy should be entitled to hold at fair and equitable rates, thus leaving it to the Courts to determine in every case of dispute what is a fair and equitable rate. This in my opinion gave the ryots no greater right than would be created by a covenant in a lease to renew it at a fair and equitable rent. To be fair and equitable, it must be fair and equitable so far as both parties are concerned, not fair and equitable as regards the ryot and unfair and unequitable as regards the proprietor of the land, and I cannot think that it would be fair and equitable to a landowner to fix the rent at a lower rate than he could obtain from a new tenant if he had not been deprived by the Act of the Legislature, of his power of determining the tenancy and reletting the land to a new tenant, more especially when I find that the ryot who gains a right of occupancy by Section 6 is not precluded from determining the tenancy of another ryot to whom he may have sublet, and who even by an occupation of twelve years gains no right of occupancy against him, and may be compelled by his superior ryot either to pay him the full rent of the land or to quit it (vide latter part of Sec. 6). I wish to remark, in order to prevent any misunderstanding, that this judgment is given upon the assumption that the defendant is not an ancient ryot having hereditary rights.

The rights of ryots who have held from the time of the Permanent Settlement at fixed rates are protected by Sec. 3 Act X. of 1859, and the means of proving such holdings have been rendered more easy, and within the power of those who are entitled to them (Sec. 4). If there be any other ancient or hereditary rights to which a ryot is entitled, he is not precluded by Act X. of 1859 from claiming and proving such right in due course of law. But such right cannot be assumed or admitted without proof, either positive or presumptive. A ryot whose title had its origin at a date subsequent to the Permanent Settlement, had not in my opinion a prescriptive, or any right of occupancy beyond the term expressly or impliedly agreed upon between the landowner and him, merely because he had held for

twelve years. Sec. 6 gives him the right whether the land be held under pottah or not. Is it to be supposed that the legislature intended to give a right of occupancy to a ryot who held under a lease for twelve years which may have expired the day after Act X. passed, and to entitle him to hold at a less rent than a ryot who had held under a lease for eleven years which expired on the same day; neither of such ryots having ever been in possession before the commencement of their respective leases? A ryot may have rights by contract, or he may have rights by virtue of express enactment, and those rights may be enforced by law. The evidence which may be necessary to prove the existence of such rights must depend upon the facts of each particular case. We have been in the habit of talking of "pergunnah rates," and of rates paid for similar land in the neighbourhood, without much consideration. Are such rates always to remain stationary, or how are they to be increased? If, for instance, in consequence of a railway or canal, means should be provided for exporting the produce, and the value of the crops should be thereby doubled, who is to be entitled to the benefit of the increased value, as the pottah granted in modern terms fall in, the land-owner or the ryot?

JUDGMENT* BY THE HONORABLE JUSTICE SUMBHOONATH PUNDIT.

All Ryots as distinguished from those cultivators of khamar lands, or of *koorfa* as undertenants of Ryots, may also be allowed to be a distinct class, though as members of this class, some may, as a sub-division, have higher and some lower and different rights.

It is, however, clear, that Ryots mentioned in Section 5 of Act X. of 1859, are not *kudmee* Ryots or Ryots holding originally under any hereditary or transferable tenures, or hold-

* From the "Englishman" of the 2nd April, 1864.

ing through those who held at one time as such, and must have acquired the right of occupancy by being allowed to hold as a Ryot for twelve years; a right which they did not possess in the tenth and eleventh year of their possession. We may also allow to the petitioner, as argued by him, that Zemindaree lands are ordinarily, for purposes of leasing, divided into two sorts—Ryottee and khamar; that what was Ryottee might in course of time become khamar, and that what was once khamar may by an act of the landholder become Ryottee lands. We may further allow that all such Ryots in this country have been, according to custom, allowed a share out of the profits of the lands cultivated by them beyond the bare wages of a hired labourer; and that Zemindars, notwithstanding the Decennial Settlement have not, by law or custom, that complete right over the lands and tenants, which parties called proprietors enjoy in other countries. Making all these allowances it has not been shown, that the assessment fixed by the last decision of this court is unfavorable to the tenants, when out of the three rupees of the former value of the gross produce of a beegah, five annas were received by the Zemindar as his rent, the remainder included along with the sum necessary for the expenses, all the profits which the Ryot may have been entitled to claim as his share.

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EXTRACTS FROM THE OPINION OF THE PRESS.

"This unpretending little book is a valuable addition to our literature upon the important subject on which it treats." The author's "aim is, on the one hand, to elucidate by an historical summary, the relative rights of Zemindars and Ryots, as they originally stood, and as they have been affected especially by the course of legislation during the British Rule in India; and, on the other, to state, in a compendious shape, the law which now regulate their relations. The historical portion however, displays a very creditable amount of research, and a considerable, though perhaps rather a theoretical than practical, acquaintance with the subject. We are not aware that the information collected together in this part of the work is accessible anywhere in the same succinct and connected shape. It has been compiled evidently with praiseworthy care and industry, and should secure for the book a place upon the shelves of all who are interested in the important questions discussed. The spirit in which this historical review is conducted is honorable to the author. The tendency among the educated and higher classes in this country is too commonly to worship the powerful and the wealthy or if, in exceptional cases, a tone seemingly the opposite of this is found, it too often bears the marks of unreality, or pseudo-liberality. The work before us has neither of these faults; it is written in a candid and ingenuous spirit; is apparently a genuine and patriotic effort to defend the cause of weak against the strong. The book is well and clearly arranged, has that most important addition to a book, a good index, and is neatly printed on good paper. The author apologizes in his preface for his English but he need not have done so, for his style is pure and good."

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"The preface is penned with considerable modesty, and good taste; a feature the more noticeable, because of its rarity in the effusions with which Young Bengal occasionally electrifies this world and Calcutta. The book is a good book in its way; and whilst no professing to treat on the existing Law of Landlord and Tenant in all its details, furnishes what, it is said, has long been required, an elementary treatise on the Substantive Law, illustrated by Legislative history and affording in a small compass information not generally available. * * We cannot follow the writer of this *brochure* into the latter portion of his book, but have no hesitation in recommending it as a simple, concise compendium of all that has been said and done in connection with the subject of which it treats."

The Bengal Hurkaru, June 6, 1864.